

VOL. X

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA

-vs-

10-CR-219S

TONAWANDA COKE CORPORATION
MARK L. KAMHOLZ,

Defendants.

Proceedings held before the

Honorable William M. Skretny, U.S.

Courthouse, 2 Niagara Circle, Buffalo,

New York on March 12, 2013.

APPEARANCES:

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ROCKY PAIGGIONE, Senior Counsel,
U.S. Department of Justice,
Appearing for the United States.

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JEANNE M. GRASSO, ESQ.,
ARIEL S. GLASNER, ESQ.,
Appearing for Tonawanda Coke Corporation.

RODNEY PERSONIUS, ESQ.,
Appearing for Mark L. Kamholz.

Also Present: Lauren DiFillipo, Paralegal
Sheila Henderson, Paralegal

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1 (Jury not present in the courtroom.)

2 THE COURT: All right. Can I just take a
3 minute with everybody on the Tonawanda Coke case
4 and the Mark Kamholz case. We had an early on
5 issue with alternate juror number, Andrew Carlson.
6 He did phone in. We just received the information
7 just a very short time ago. And his -- he had car
8 trouble. His car wouldn't start, and he said he
9 had no way to get here. So we had to try to make
10 arrangements to get a cab out there. And then we
11 got a call back saying that he was successful in
12 waking up his girlfriend, and she's going to bring
13 him in rather than have to take the cab in.

14 So, it looks like about 10:15 is a realistic
15 starting time. He should be here within a half
16 hour, is our understanding. So, you know, whatever
17 you have to do, you've got a little extra time to
18 do it, and we'll try to get started promptly at
19 10:15. Okay?

20 MR. LINSIN: May we work here, your Honor?

21 THE COURT: Yeah, sure. Anywhere. That's
22 fine.

23 MR. LINSIN: Thank you.

24 THE COURT: Okay. Thank you.

25 (Short recess was taken.)

1 (Jury seated.)

2 THE COURT: Good morning, ladies and
3 gentlemen.

4 THE JURY: Good morning.

5 THE COURT: Good to see you this morning.
6 I was a little worried there. Please have a seat.

7 All right. You didn't get that automobile
8 started, I guess, right? No. Okay. Mr. Carlson,
9 we're glad to have you here, though.

10 Okay. We're back on in the case of United
11 States versus Tonawanda Coke Corporation and Mark
12 Kamholz, defendants. The attorneys and parties are
13 back present. And a welcome sight for us all, our
14 jury is here. Roll call waived. We're glad to see
15 everybody. Good morning. You probably see a
16 familiar face in the witness stand. That's Larry
17 Sitzman. He is here. He remains under oath. And
18 we're going to start this morning with
19 cross-examination by Mr. Personius on behalf of
20 Defendant Kamholz.

21 Keep in mind, ladies and gentlemen, that we ask
22 you to keep your minds open until all of the
23 evidence is in. Don't prejudge the case. Keep in
24 mind that this is an important case to both sides,
25 as you well know.

1 And we still are in the government's case. The
2 government has the burden of proof beyond a
3 reasonable doubt on each essential element of the
4 crime charged. And as you know, there are 19
5 counts that comprise the indictment in this case,
6 and the government has that same burden on each one
7 of those counts, and you have to separately
8 consider them -- each count, that is, and each
9 defendant with respect to each count in the
10 indictment.

11 The defendants are presumed innocent. That
12 never -- that presumption never leaves them until
13 you unanimously conclude, if you reach that point,
14 that the proof satisfies you beyond a reasonable
15 doubt as to the guilt of either or both of the
16 defendants in this case.

17 So, I think with that we're ready to proceed.
18 And, Mr. Personius, if you would start, please.

19 MR. PERSONIUS: Thank you, your Honor.
20 L A R R Y S I T Z M A N, having previously been
21 duly sworn as a witness, testified further as
22 follows:

23 CROSS-EXAMINATION BY MR. PERSONIUS:

24 Q. Good morning, Mr. Sitzman.

25 A. Good morning.

1 Q. I did introduce myself a few minutes ago while
2 we were waiting, but to formally introduce myself,
3 I'm Rod Personius, and I represent Mark Kamholz.

4 Mr. Sitzman, do you recall that during the
5 course of the investigation by the government that
6 you met with individuals involved in that
7 investigation on three different occasions?

8 A. Which investigation are you referring to?

9 Q. The criminal investigation.

10 A. Yes, I believe it was three.

11 Q. Okay. I just want to briefly go through those.
12 Do you remember that the -- the first time that you
13 were involved in a meeting related to this case was
14 on October 19th of 2009?

15 A. Yes.

16 Q. That was at the DEC office here in Buffalo?

17 A. Correct.

18 Q. And Mr. Mango was present?

19 A. Correct.

20 Q. And an agent or investigator from the
21 Department of Environmental Conservation named
22 O'Connor?

23 A. Yes.

24 Q. And there was also an agent there from the EPA,
25 whose last name, if I recall, was Kelly. Do you

1 remember that?

2 A. Yes.

3 Q. And you went to this interview with Cheryl
4 Webster?

5 A. Yes.

6 Q. And then as I understand it, the next time that
7 you met with -- if I could call it government
8 investigators, would have been a few months later
9 in February of 2010?

10 A. I believe that's the date, yes.

11 Q. All right. And then more recently, to prepare
12 for your testimony, as I understand it, you met
13 again with the investigators in February of this
14 year, February of 2013. Is that true?

15 A. Correct.

16 Q. All right. And is it safe for us to conclude
17 that on each of these occasions when you met with
18 representatives of the government you did your very
19 best to be accurate and complete in the information
20 that you shared regarding Tonawanda Coke?

21 A. Yes.

22 Q. And regarding Mr. Kamholz?

23 A. Yes.

24 Q. All right. Now, yesterday during your
25 testimony you referenced this inspection, the joint

1 inspection by the EPA and the DEC, that took place
2 at Tonawanda Coke in April of 2009, do you recall
3 that?

4 A. Yes.

5 Q. You were asked a lot of questions about that,
6 correct?

7 A. Yes.

8 Q. And if I recall your testimony correctly, is it
9 true that you told us that at the conclusion of the
10 investigation you made a recommendation to Pat
11 Cahill, the foreman of the by-products area, and
12 Mr. Kamholz that some action be taken regarding
13 this pressure-relief valve, do you recall that?

14 A. Yes.

15 Q. And if I recall your testimony correctly, your
16 recommendation was to do one of two things, either
17 raise the set point for the pressure when it would
18 release for the valve, or somehow reduce the
19 pressure in the coke oven gas line --

20 A. Correct.

21 Q. -- is that correct? And what you told us, if I
22 recall, is that your understanding is that within
23 days of you making that recommendation, action was
24 taken to raise the set point for the pressure
25 relief valve, is that true?

1 A. Yes.

2 Q. Okay. And in the months that followed, is it
3 also true that you determined that by virtue of
4 this action having been taken and due to a
5 reduction in the production level at Tonawanda
6 Coke, that the pressure-relief valve, in fact,
7 stopped releasing?

8 A. I believe that to be true, yes.

9 Q. And, in fact, when you met with Mr. Mango and
10 these two agents on October 19th of 2009, that's
11 one of the pieces of information that you and
12 Miss Webster shared with the government, true?

13 A. I would have to read the notes again, but, yes,
14 that --

15 Q. Would it help you to see them to refresh your
16 recall?

17 A. It may. It may, yes.

18 Q. Let's do that. Could -- for identification,
19 Lauren, could we please put Government
20 Exhibit 3560.05 on the screen.

21 Just so we've identified it for the written
22 record, Mr. Sitzman, do you see on the screen a
23 document -- it's the first page of a document that
24 has a yellow sticker in the upper right?

25 A. Yes.

1 Q. Okay. And it says Government Exhibit 3560.05?

2 A. Correct.

3 Q. All right. Could we go to the next page,
4 please, Lauren.

5 Okay. We're on the second page of this
6 exhibit, is that correct?

7 A. Yes.

8 Q. Okay. Lauren, could you make that last
9 paragraph bigger, please?

10 We have taken the last paragraph at the bottom
11 of page 2 of this exhibit and we've made it bigger.
12 Do you see that, Mr. Sitzman?

13 A. Yes.

14 Q. Would you please just read that paragraph to
15 yourself.

16 A. Okay.

17 Q. Have you read it?

18 A. Yes.

19 Q. Could you take it down, please, Lauren.

20 We have to take it off the screen because the
21 question is going to be if that refreshes your
22 recall.

23 A. Okay.

24 Q. So my question is: Having reviewed that
25 paragraph from Government Exhibit 3560.05,

1 Mr. Sitzman, does that refresh your recollection
2 about what you told Mr. Mango and the investigators
3 on October 19, 2009, regarding the pressure-relief
4 valve?

5 A. That reflects that -- that they didn't
6 accurately describe what I would have told them, in
7 the notes.

8 Q. So there's an error in the report?

9 A. Yes.

10 Q. Okay. And have you had a chance to review this
11 report before you took the stand?

12 A. Just in the last -- while I was preparing for
13 trial.

14 Q. You did review this report?

15 A. Yes.

16 Q. Okay. And did you bring it to the attention of
17 anyone that there was an error in this report?

18 A. I believe I did, yes.

19 Q. Who did you tell about that?

20 A. I think I told our attorney, our DEC
21 representative, and --

22 Q. Did you tell anyone other than the DEC
23 attorney?

24 A. I don't believe so.

25 Q. All right. And what is the error, Mr. Sitzman,

1 that you've identified in the report?

2 A. The error, it said that -- there was two
3 errors. The one that really stuck out to me was
4 that it wasn't releasing anymore because the plant
5 was only operating at 50 percent capacity.

6 Q. Okay. And what was the error in that?

7 A. Well, it wasn't releasing anymore because it
8 had been adjusted to not release.

9 Q. So, whatever the reason, it wasn't releasing as
10 of October of 2009.

11 A. Correct.

12 Q. Okay.

13 MR. PERSONIUS: May I have a minute,
14 Judge?

15 THE COURT: Sure.

16 MR. PERSONIUS: Your Honor, that's all I
17 have.

18 Thank you, Mr. Sitzman.

19 THE COURT: Okay, Mr. Personius. Thank
20 you.

21 Mr. Mango, is there anything else?

22 MR. MANGO: Yes, your Honor.

23 Your Honor, may I proceed?

24 THE COURT: Yes, you may.

25

1 REDIRECT EXAMINATION BY MR. MANGO:

2 Q. Good morning, Mr. Sitzman.

3 A. Good morning.

4 Q. On August 21st, 2008, when you found that the
5 pilot light was out in the battery flare stack,
6 what did Mark Kamholz tell you was the cause for
7 the pilot light being out?

8 A. I believe he told us that during some work at
9 the battery the -- the gas line feeding the pilot
10 had been ripped off and therefore was disconnected.

11 Q. Okay. Did he tell you how long that the pilot
12 light was out?

13 A. No.

14 MR. MANGO: Your Honor, I'd like to pull
15 up for identification purposes Government
16 Exhibit 3560.12. For identification purposes. And
17 it's a two-page document. I'm going to start with
18 the first page, your Honor, if that's --

19 THE COURT: Certainly.

20 MR. MANGO: Thank you.

21 BY MR. MANGO:

22 Q. If we can zoom in on that, please.

23 Mr. Sitzman, I want you to review this document
24 and then look up when you're ready.

25 A. Okay.

1 Q. Okay. If we can go to the second page, please.

2 A. Okay.

3 Q. Mr. Sitzman, what is this document, if you
4 could just identify it. What is it?

5 A. It's an inspection detail report for the
6 inspection on August 21st.

7 Q. Okay. Is that one of those AFS entries --

8 A. Yes.

9 Q. -- that you talked about on cross-examination?

10 A. Yes.

11 Q. Is this something that you were involved in
12 preparing?

13 A. I was involved in reviewing, yes.

14 Q. And this summarizes what you did on August 21st
15 of 2008, is that right?

16 A. Yes.

17 MR. MANGO: Your Honor, at this point,
18 absent an objection, I would offer Government
19 Exhibit 3560.12 into evidence.

20 MR. LINSIN: No objection, Judge.

21 MR. PERSONIUS: No objection, your Honor.

22 THE COURT: All right. There being no
23 objection, 3560.12 received, no objection. And it
24 may be published.

25 (Government's Exhibit No. 3560.12 was

1 received into evidence.)

2 BY MR. MANGO:

3 Q. Thank you, your Honor. If we could go to
4 page 1. Let's just take a look at this.

5 So, Mr. Sitzman, just so the jury is aware,
6 this is -- the achieved date there, this relates to
7 your August 21st, 2008, inspection?

8 A. Correct.

9 Q. Okay. And in the commentary period do you
10 discuss your identification that there was no pilot
11 light on the battery flare?

12 A. Yes.

13 Q. Okay. All right. Thank you.

14 MR. MANGO: We can take that down for now,
15 your Honor.

16 BY MR. MANGO:

17 Q. Mr. Sitzman, do you recall whether you
18 conducted a follow-up inspection at the Tonawanda
19 Coke facility on September 9th of 2008?

20 A. Yes.

21 Q. Okay. During that inspection, now two weeks --
22 over two weeks after this August 21st inspection,
23 was the pilot light back in operation?

24 A. No.

25 MR. MANGO: Your Honor, I'd like to pull

1 up for identification purposes Government
2 Exhibit 97, also a two-page document.

3 BY MR. MANGO:

4 Q. Mr. Sitzman, I'd like you to review this
5 portion here. Just look up when you're ready.

6 A. Okay.

7 Q. If we could go to the second page.

8 THE COURT: Does your monitor have the
9 full section?

10 MR. MANGO: It does, your Honor. Thank
11 you.

12 THE COURT: Okay.

13 THE WITNESS: Okay.

14 BY MR. MANGO:

15 Q. All right. Now, you've reviewed both pages of
16 Government Exhibit 97 for identification purposes,
17 is that right?

18 A. Yes.

19 Q. All right. What is Government Exhibit 97?

20 A. It's a -- again, an inspection detail report
21 from our AFS computer system and on an inspection I
22 conducted in September at Tonawanda Coke.

23 Q. Okay. And were you involved in the creation of
24 this AFS inspection detail?

25 MR. LINSIN: Your Honor, excuse me.

1 Tonawanda Coke has no objection to the introduction
2 of the document, if that's where we're going.

3 THE COURT: Okay. Maybe that will enable
4 us to move forward. Mr. Personius, same?

5 MR. PERSONIUS: No objection.

6 THE COURT: All right. 97 received.

7 MR. MANGO: Thank you, your Honor.

8 THE COURT: And it may be published.

9 (Government's Exhibit No. 97 was received
10 into evidence.)

11 BY MR. MANGO:

12 Q. I would ask that if we can go to page 1,
13 please. Mr. Sitzman, if we can just zoom in for
14 the jury's benefit now. So this shows your
15 inspection there on September 9th of '08?

16 A. Correct.

17 Q. Okay. And again you inspected some flare --
18 some records relating to the battery flare, and you
19 learned that the pilot light was not operating at
20 that point?

21 A. Correct.

22 Q. Okay. And is it fair to say that this says
23 that you learned that there was actually no fuel
24 hooked up to the pilot light?

25 A. Correct.

1 Q. Thank you, Lauren. We can take that down.

2 Mr. Sitzman, when you conducted your night
3 inspection -- do you recall testifying about that
4 on cross-examination?

5 A. Yes.

6 Q. How much advance notice did you give Defendant
7 Kamholz?

8 A. A day or two.

9 Q. All right. I'd like to go to a defense exhibit
10 now, your Honor, Defense Exhibit III, please.
11 Okay. And this is in evidence.

12 Mr. Sitzman, do you recall seeing this
13 inspection detail from your AFS computer system
14 during cross-examination?

15 A. Yes.

16 Q. An inspection by Mr. Foersch on, looks like
17 March 12th, 2003, is that right?

18 A. Yes.

19 Q. And then there's a second page of this
20 document. Miss Henderson, if we could please go to
21 that.

22 Mr. Sitzman, do you recall being asked
23 questions about whether this was a compliance
24 inspection that was conducted in March of 2003?

25 A. Yes.

1 Q. All right. From your reading of what happened
2 on this day, is there any indication that
3 Mr. Foersch looked inside the quench towers or went
4 to the by-products area?

5 A. No.

6 Q. And does a compliance inspection -- if you can
7 tell the jury, does a compliance inspection mean
8 you must physically view each and every emission
9 source at the facility?

10 A. No, it does not.

11 Q. Okay. Thank you, Miss Henderson. We can take
12 that down.

13 Have you talked to Defendant Kamholz during
14 your interactions with the Tonawanda Coke
15 Corporation?

16 A. Many times.

17 Q. Yes. Based on what you know of the DEC air
18 permit file for Tonawanda Coke, do you know if it
19 was Mark Kamholz who applied for the air permits on
20 behalf of Tonawanda Coke?

21 A. His signature was on the application.

22 Q. Okay. And how far back do those applications
23 go? Well, let me ask you this: Do you remember
24 seeing any Air 100s in the 1980s with his signature
25 on it?

1 A. Yes, I do.

2 Q. Was he the one whose signature appeared on any
3 permit modification requests?

4 A. Yes.

5 Q. Was his signature the one that appeared on any
6 request for waivers or exemptions?

7 A. Yes.

8 Q. Okay. Based upon these filings and your
9 discussions with Defendant Kamholz, do you know if
10 Defendant Kamholz knew the Clean Air Act
11 regulations?

12 MR. LINSIN: Objection, your Honor; what
13 this witness knows Mr. Kamholz knew.

14 THE COURT: Well, it calls for a yes or a
15 no. I'm going to allow it to go that far. So,
16 overruled.

17 THE WITNESS: I'm sorry. Could you repeat
18 the question?

19 BY MR. MANGO:

20 Q. Yes. Sure. Based on the filings that you've
21 reviewed with Defendant Kamholz's signature on it
22 that we just talked about, and your discussions
23 with him either on the telephone or at the plant,
24 do you believe that he knew the Clean Air Act
25 regulations?

1 A. Yes.

2 MR. PERSONIUS: And I have an objection to
3 foundation, also, Judge.

4 THE COURT: Yeah. We'll leave it -- it's
5 going to stand where it is right now, and then
6 you're going to move on.

7 MR. MANGO: Yes, your Honor, I am.

8 THE COURT: All right.

9 MR. MANGO: Do you know whether Mark
10 Kamholz knew the process by which to -- to seek a
11 permit for an emission source?

12 MR. PERSONIUS: Same objection, Judge.

13 MR. LINSIN: I join in the objection, your
14 Honor.

15 THE COURT: Sustained.

16 BY MR. MANGO:

17 Q. I'd like to move on to another defense exhibit
18 in evidence, Defense Exhibit I, please,
19 Miss Henderson.

20 Mr. Sitzman, do you remember seeing this
21 inspection detail, which included Mr. Foersch,
22 yourself, and Miss Webster included on it?

23 A. Yes.

24 Q. All right.

25 THE COURT: This is received, right?

1 MR. MANGO: Yes, this is in evidence,
2 according to my notes.

3 BY MR. MANGO:

4 Q. If we can go to the next page, please,
5 Miss Henderson.

6 Mr. Sitzman, please take a look at that. On
7 this visit, can you tell the jury, did you inspect
8 the quench towers?

9 A. No.

10 Q. All right. And this computer form, again --
11 sorry. If we could go back to the first page.

12 This computer form calls this an inspection up
13 here, routine inspection, is that right?

14 A. Yes.

15 Q. And you testified on cross-examination this was
16 actually part of you going out to all of the
17 facilities in the Tonawanda area to tell them about
18 this air monitoring study that was now ongoing, is
19 that right?

20 A. Correct.

21 Q. When you told Defendant Kamholz that you were
22 doing air monitoring study and there was a benzene
23 issue, did he indicate there might be a source of
24 benzene coming from a bleeder valve in the coke
25 oven gas --

1 MR. LINSIN: Objection, leading, your
2 Honor.

3 THE COURT: Sustained.

4 MR. MANGO: -- line. I'll rephrase.

5 BY MR. MANGO:

6 Q. During this inspection did you tell Mr. Kamholz
7 that you were concerned about benzene in the air?

8 A. Yes.

9 Q. Based on that conversation you had, did
10 Mr. Kamholz bring to your attention --

11 MR. LINSIN: Objection, your Honor.

12 THE COURT: Leading?

13 MR. LINSIN: Exactly.

14 THE COURT: Sustained.

15 BY MR. MANGO:

16 Q. Was there any sources of benzene brought to
17 your attention by Defendant Kamholz after you told
18 him you were concerned about benzene in the air?

19 A. No.

20 MR. MANGO: All right. I'd like to go for
21 identification purposes, your Honor, to Defendants'
22 Exhibit NNN for identification.

23 BY MR. MANGO:

24 Q. Mr. Sitzman, do you recall seeing these and
25 identifying Defendants' Exhibit NNN as notes of

1 Cheryl Webster from a May 28th, 2008, inspection?

2 A. Yes.

3 Q. All right. And during that visit, now after
4 having the air monitoring study be ongoing for some
5 period of time, did you -- were you told at all as
6 to potential sources of benzene in the air from a
7 bleeder valve?

8 MR. LINSIN: Objection, leading, your
9 Honor.

10 MR. PERSONIUS: And, your Honor, forgive
11 me, but this is not in evidence. I don't think it
12 should be on the screen while he's testifying about
13 events on this day.

14 THE COURT: Well, I'm going to sustain the
15 objection to leading. You have to have a proper
16 purpose for showing this exhibit to this witness.

17 MR. MANGO: Yes, your Honor. We can take
18 it down. I just wanted to call to his attention
19 these notes that he was asked about.

20 BY MR. MANGO:

21 Q. And I'm going to ask you some follow-up on
22 that, Mr. Sitzman. Do you recall that May 28th,
23 2008, visit?

24 A. Yes.

25 Q. Okay. Do you recall telling Defendant Kamholz

1 that you believed Tonawanda Coke was the source of
2 benzene in the air?

3 A. Was one of the major sources of benzene in the
4 area, yeah, I think is how I phrased it.

5 Q. Okay. And upon being told that, did Defendant
6 Kamholz on that day identify any possible sources
7 of benzene at the plant that you were not aware
8 about -- of?

9 A. The only ones we would have talked about were
10 the ones that were regulated already.

11 Q. Okay. So did he bring up any unregulated
12 sources of benzene?

13 A. No.

14 Q. Okay. During cross-examination you were asked
15 how many times DEC had been to the Tonawanda Coke
16 plant in the past 13 years. Mr. Linsin asked you
17 that question. Do you remember that?

18 A. Yes.

19 MR. LINSIN: Your Honor, time frame is
20 important here, and past 13 years from today's date
21 is not the question that was posed to the witness
22 yesterday.

23 THE COURT: Okay. Let's get to a date,
24 please.

25

1 BY MR. MANGO:

2 Q. I believe prior to April of '09 were you asked
3 approximately how many times the DEC was at the
4 Tonawanda Coke facility in the -- 13 years from
5 April of '09. Do you remember that question?

6 A. Yes.

7 Q. Okay. Sitting here today, do you know the
8 answer to that question?

9 A. No.

10 Q. Okay. But during those 13 years, do you know
11 if some of the times you or other individuals were
12 at Tonawanda Coke was in response to complaints?

13 A. Yes.

14 Q. And if you were responding as part of a
15 complaint, can you tell the jury how short -- if
16 you did end up visiting the plant, how short that
17 interaction could have been?

18 MR. PERSONIUS: Object to what could have
19 been, your Honor.

20 THE COURT: To the form, sustained.

21 BY MR. MANGO:

22 Q. Okay. Do you remember the shortest period of
23 time -- when responding to complaints at the
24 Tonawanda Coke facility, the shortest period of
25 time you spent there?

1 A. Fifteen to thirty minutes.

2 Q. Okay. Does the AFS computer system allow you
3 to distinguish this as a 15-minute inspection?

4 A. No.

5 Q. Okay. On cross-examination you discussed
6 issuing a notice of violation for the operation of
7 the east quench tower, quench tower number 2 --

8 A. Correct.

9 Q. -- without baffles. You recall that?

10 A. Yes.

11 Q. And you said that you did not check with Gary
12 Foersch before issuing a notice of violation for
13 baffles in the east quench tower. Is that right?

14 A. Correct.

15 Q. Did the Title V permit require baffles in this
16 tower?

17 A. Yes, it did.

18 Q. Okay. Did you confirm that the east quench
19 tower did not have baffles?

20 A. Yes, I did.

21 Q. Did you need any other information than that?

22 A. No.

23 Q. Did Mr. Foersch ever tell you that he had
24 waived the requirements for baffles in the east
25 quench tower?

1 A. No, he did not.

2 Q. Did he even have authority to orally waive
3 conditions of the Title V permit?

4 MR. LINSIN: Objection.

5 THE COURT: Grounds?

6 MR. LINSIN: Requesting a legal conclusion
7 from this witness.

8 MR. MANGO: Your Honor, this witness is
9 the RAPCE at this point. He knows what his staff
10 is authorized to do and not authorized to do. I
11 can rephrase the question to focus on his duties.

12 THE COURT: Go ahead.

13 BY MR. MANGO:

14 Q. Mr. Sitzman, in your position as RAPCE and your
15 understanding of what responsibilities Mr. Foersch
16 had and authority he had, did Mr. Foersch have the
17 authority to orally waive conditions of the Title V
18 permit?

19 MR. PERSONIUS: I object, your Honor.

20 THE COURT: Grounds?

21 MR. PERSONIUS: It misstates the legal
22 standard.

23 MR. LINSIN: And I renew my objection,
24 your Honor, that it is seeking a legal opinion from
25 this witness.

1 THE COURT: No, I don't think it is. And
2 you may examine on it. Overruled.

3 MR. MANGO: You can answer it.

4 THE COURT: In the context of the
5 question --

6 MR. MANGO: Yes.

7 THE COURT: -- I'm overruling the
8 objection.

9 THE WITNESS: No.

10 BY MR. MANGO:

11 Q. No, he did not have, in your mind, authority to
12 orally waive conditions of the Title V permit?

13 A. Correct.

14 Q. Do you know if Defendant Kamholz knew that?

15 MR. PERSONIUS: Object, your Honor.

16 THE COURT: Sustained.

17 BY MR. MANGO:

18 Q. All right. On cross-examination you testified
19 that you -- when you found the mistake regarding
20 the west quench tower in the Title V permit, quench
21 tower number 1, with the exemption relating to
22 usage less than 10 percent of the time, is that
23 right?

24 A. Correct.

25 Q. At the time you found that mistake, the Title V

1 permit had already expired, is that right?

2 A. Correct.

3 Q. So at the time you noticed the mistake, was
4 there any point in modifying the permit, if you
5 know?

6 A. No. The permit was suspended at that time.

7 Q. So if Tonawanda Coke used the west quench tower
8 less than 10 percent of the time, DEC considered
9 them in compliance with their Title V permit?

10 A. Yes.

11 Q. And if they used the west quench tower
12 10 percent or more of the time, would DEC consider
13 Tonawanda Coke out of compliance with their Title V
14 permit?

15 A. Yes.

16 Q. And at the time you issued your notice of
17 violation for just the east tower, going back to
18 tower number 2, did you know whether or not
19 Tonawanda Coke was using the west tower, number 1,
20 10 percent or more of the time?

21 A. No, I did not.

22 Q. Okay. Had you interviewed any of the Tonawanda
23 Coke employees to make that determination?

24 A. No.

25 Q. So you had no idea, at the time you issued your

1 notice of violation, whether or not Tonawanda Coke
2 was using the west tower, number 1, 10 percent or
3 more of the time.

4 THE COURT: Objection? Asked and
5 answered?

6 MR. PERSONIUS: And leading.

7 THE COURT: All right. Sustained.

8 BY MR. MANGO:

9 Q. Okay. I'd like to go, your Honor, to
10 Defendants' Exhibit QQQ.01, Miss Henderson, please,
11 which is in evidence.

12 Mr. Sitzman, do you remember seeing this
13 photograph?

14 A. Yes.

15 Q. Okay. Is this photograph taken from the ground
16 or an elevated position?

17 A. It appears to be from an elevated position.

18 Q. Okay. In fact, do you see -- this red, does
19 that appear to be a roof of a structure, some type
20 of structure?

21 A. Yes.

22 Q. So is this -- if you could tell the jury, is
23 this photo representative of the view you would
24 have standing on Broadway with the rest of the
25 pipes, the light oil scrubber, the actifier, the

1 other by-products components in the background?

2 A. No.

3 Q. So would it be fair to say that this is an open
4 and obvious depiction of the bleeder valve if
5 you're elevated off the ground and not standing on
6 Broadway?

7 A. Could you restate that again, please?

8 THE COURT: Be interesting to see how you
9 do on this one, Mr. Mango.

10 MR. MANGO: Yeah, I know. I think the
11 question -- the earlier question is all I want to
12 really get on this, your Honor. I'm going to move
13 on.

14 Thank you. We can take that down,
15 Miss Henderson.

16 Lauren, if we could please pull up Government
17 Exhibit 131. Your Honor, I'd like to pull up
18 Government Exhibit 131 and go to page 4-2.

19 BY MR. MANGO:

20 Q. Mr. Sitzman, do you recall seeing this table in
21 the hazardous air pollution emission inventory
22 report from 2003?

23 A. Yes.

24 Q. All right. Does this provide notice that the
25 pressure-release valve in the coke oven gas system

1 was releasing gas to the atmosphere every 30
2 minutes?

3 A. No.

4 Q. Does this provide notice that the
5 pressure-release valve in the coke oven gas system
6 was releasing, say, 173 tons of coke oven gas into
7 the atmosphere on any given year?

8 A. No.

9 Q. Did this hazardous air pollutant report provide
10 you notice of the pressure-release valve in the
11 coke oven gas system -- that it was subject to
12 Tonawanda Coke's Title V permit?

13 A. No.

14 Q. Thank you, Lauren. We can take that down.

15 All right. You testified, Mr. Sitzman, that
16 the DEC did not issue a notice of violation for the
17 bleeder/pressure-release valve, is that right?

18 A. Correct.

19 Q. In 2009 were you advised that there was a
20 criminal investigation ongoing?

21 A. Yes, I was.

22 Q. Did that delay at all or affect your civil
23 enforcement?

24 A. It did delay our civil enforcement.

25 Q. And, in fact, during cross-examination you were

1 asked about a meeting a long time ago between --
2 where I attended and you provided some information
3 to the government --

4 A. Correct.

5 Q. -- do you remember that? October of 2009?

6 A. Yes.

7 Q. Did you know any of the details of the criminal
8 investigation at that point?

9 A. None.

10 Q. Did you learn any of the details of the
11 criminal investigation after that point?

12 A. None.

13 Q. Were you privy to that information?

14 A. Not at all.

15 Q. Were you involved in any way in referring the
16 case for criminal prosecution?

17 A. No, I wasn't.

18 Q. You testified that you were told in the April
19 inspection that the -- the bleeder/pressure-release
20 valve was set at 130 centimeters of oil? Do you
21 recall that?

22 A. Yes.

23 Q. Okay. Did you know at the time of your closing
24 conference that the bleeder was actually normally
25 set at 100 centimeters of oil?

1 A. No.

2 Q. Did anybody tell you that?

3 A. No.

4 Q. Or how about, did you know at the time of your
5 closing conference or afterwards that someone was
6 instructed to not let the bleeder release during
7 the April inspection?

8 A. No.

9 Q. Were you told that?

10 A. No.

11 Q. You were asked during cross-examination about
12 during that October meeting that me and you had,
13 whether you advised the government whether you
14 believed or not the pressure-release valve was
15 still releasing --

16 A. Correct.

17 Q. -- right? And that was based on information
18 provided to you by the Tonawanda Coke Corporation?

19 MR. PERSONIUS: Your Honor, I object to
20 the leading.

21 THE COURT: Yeah, this is leading.
22 Sustained.

23 MR. MANGO: Okay. Was that -- was that
24 information that was provided to you by the
25 Tonawanda Coke Corporation?

1 MR. PERSONIUS: Your Honor, that's
2 leading.

3 THE COURT: What's your question?

4 BY MR. MANGO:

5 Q. Do you recall today how you learned that the
6 pressure-release valve was not operating in October
7 of '09?

8 A. I -- I remember hearing about it, and I
9 don't -- can't recollect where that came from.

10 Q. You remembered hearing about it. That's what
11 your memory is?

12 A. Yes.

13 Q. Okay. Mr. Sitzman, how long has Part 201 --
14 that's the New York Code, Rules, and Regulations,
15 Part 201 -- how long has that part imposed
16 permitting requirements for emission sources?

17 A. Since at least the early 1970s.

18 Q. Okay. So let's say, for example, if the
19 bleeder/pressure-release valve was installed, let's
20 say ten years back from 2009, that would be 1999,
21 would it have to have been permitted under Part
22 201?

23 A. Yes.

24 Q. Okay. How about, let's go back ten years
25 before that. If it was installed in 1989, would it

1 have needed a permit pursuant to Part 201?

2 A. Yes.

3 MR. MANGO: Thank you, your Honor. I have
4 nothing further subject to any questions the jury
5 may have for this witness.

6 THE COURT: Okay, Mr. Mango. Thank you.

7 Mr. Linsin, any recross?

8 MR. LINSIN: Thank you. Very briefly,
9 your Honor.

10 Pardon me, your Honor. May I proceed?

11 THE COURT: Certainly.

12 RECROSS EXAMINATION BY MR. LINSIN:

13 Q. Good morning, Mr. Sitzman.

14 A. Good morning.

15 THE COURT: Do you remember Mr. Linsin
16 from yesterday?

17 THE WITNESS: Yes, I do.

18 BY MR. LINSIN:

19 Q. You just testified on redirect examination, if
20 I heard you correctly, sir, that when you learned
21 about this exemption that DEC had granted for the
22 baffles in quench tower number 1 -- when you
23 learned that information, the facility's Title V
24 permit had already expired. Did I hear your
25 testimony correctly?

1 A. Yes.

2 Q. All right. But the truth is, Tonawanda Coke's
3 Title V permit has never expired, isn't that
4 correct?

5 A. That's a more accurate portrayal, yes.

6 Q. The truth is that the facility applied for a
7 renewal of that permit in a timely fashion,
8 correct?

9 A. Correct.

10 Q. And your agency notified Tonawanda Coke that it
11 was going to renew -- was going to administratively
12 extend the permit until it could make a decision --

13 A. Correct.

14 Q. -- correct?

15 A. Correct.

16 Q. So, from the time that permit was issued
17 in 2002 until today, that permit has remained in
18 effect, correct?

19 A. Correct.

20 Q. And the obligations of that permit with respect
21 to Tonawanda Coke and the obligations with respect
22 to the Department of Environmental Conservation
23 have remained in effect throughout that time
24 period, correct?

25 A. Correct.

1 THE COURT: It's the Title V permit?

2 MR. LINSIN: Yes, sir.

3 BY MR. LINSIN:

4 Q. Is that what you're responding to, sir?

5 A. Yes.

6 Q. You were asked at the end of your redirect
7 examination that whether -- when the DEC's Part 201
8 regulations were first implemented or first
9 implemented or first enacted. And if I heard you
10 correctly, you said they have been in effect since
11 the 1970s, is that correct?

12 A. Yes.

13 Q. Do you know what year?

14 A. Not off the top of my head, no.

15 Q. And do you know what form those regulations
16 existed in the 1970s? How they compared to the 201
17 regulations that are in effect today?

18 A. They were different than the regulations today.

19 Q. And as a matter of fact, between 1970 and 2009,
20 those regulations have changed fundamentally at a
21 number of different points as the law has evolved
22 and developed, correct?

23 A. I don't think I would characterize it as
24 fundamentally changed. Certainly, administratively
25 permit issues have changed.

1 Q. Was the enactment of the Clean Air Act in
2 1990 -- or the amendments to the Clean Air Act in
3 1990, was that a fundamental change in the way the
4 Clean Air Act was administered and its
5 requirements?

6 A. Not in New York.

7 Q. It didn't change the way you did things in New
8 York?

9 A. We always had permits.

10 Q. It changed the way the permits were written,
11 didn't it?

12 A. Yes.

13 Q. It changed the way the reporting requirements
14 for each facility were organized and structured,
15 correct?

16 A. Correct.

17 Q. And the definitions of certain terms were
18 changed, key terms were changed in New York State
19 in 1996, correct?

20 A. Correct.

21 Q. And as a matter of fact, that -- those changes
22 in definitions continue even until today, correct?

23 A. Correct.

24 Q. Now, you were asked if, in your opinion, this
25 bleeder valve had been installed in 1999 would it

1 have needed a permit. And I heard you testifying
2 it was your opinion that it would have, correct?

3 A. Correct.

4 Q. And even in 1989 it would have needed a permit,
5 correct?

6 A. Correct.

7 Q. But if this facility had a bleeder valve back
8 even into the 1940s, that would clearly have
9 predated the New York State air emissions
10 regulations, wouldn't it?

11 A. Yes.

12 Q. And therefore would not have required a permit,
13 correct?

14 A. I disagree.

15 MR. LINSIN: One moment, please, your
16 Honor.

17 THE COURT: Certainly.

18 MR. LINSIN: May I please have Government
19 Exhibit 18.18, please. The second Condition 4 in
20 the document, please.

21 THE COURT: Okay. This is received.

22 MR. LINSIN: Yes. I'm sorry, your Honor.
23 It is in evidence.

24 BY MR. LINSIN:

25 Q. All right. Thank you. If we can enlarge the

1 top half of the page, please. Including the
2 heading on the page, please.

3 Now, Mr. Sitzman, do you recognize this as
4 condition number 4 from Tonawanda Coke's Title V
5 permit that we you testified about yesterday?

6 A. Yes.

7 Q. Now, I'd like to ask you to focus your
8 attention again on the first clause of Item 4.1.
9 And ask if this clause doesn't say that "If an
10 existing emission source was subject to permitting
11 requirements of 6 New York Code, Rules, and
12 Regulations Part 201 at the time of construction or
13 modification" -- am I reading that accurately?

14 A. Yes.

15 MR. MANGO: Your Honor, I'm going to
16 object. This is beyond the scope of redirect at
17 this point.

18 THE COURT: No. Overruled.

19 BY MR. LINSIN:

20 Q. So, Mr. Sitzman, the question I asked you a
21 moment ago was that if a pressure-relief valve was
22 installed or existed on the coke oven gas line at
23 the Tonawanda Coke facility -- let's say it was
24 constructed in the 1940s, the Part 201 requirements
25 wouldn't have applied to that pressure-relief valve

1 at the time it was constructed, would it, because
2 they didn't exist then?

3 A. Correct.

4 Q. And unless you knew something about the
5 modification or operation of that valve
6 subsequently, you couldn't apply this condition,
7 could you?

8 A. I think, regardless what that says, that we
9 have many sources built in the 1940s or before, and
10 at some point they must have required in our
11 department, before my time, to have permits,
12 because they have permits now.

13 Q. Well, what I'd like to ask you to do -- instead
14 of offering your opinion about what you think must
15 have happened, what I'd like to ask you to do is to
16 focus on the actual language of this permit that
17 controls this facility and that is the subject of
18 five counts in this criminal indictment. And what
19 I'm asking you is -- would you like me to repeat
20 the question?

21 A. Please.

22 Q. My question is, sir: If this pressure-relief
23 valve was constructed in the '40s when the New York
24 rules and regulations regarding air emissions --
25 before they had even been enacted, those rules

1 wouldn't have applied to it at the time of
2 construction, correct, because they didn't exist?

3 A. Correct.

4 Q. And unless you knew something about -- because
5 the only other condition in this first clause is
6 construction or modification. Unless you knew
7 something about how that valve had been modified,
8 according to the definition of the term
9 "modification," because that term is defined, isn't
10 it?

11 A. Correct.

12 Q. So unless you knew something about how that
13 valve was modified, you couldn't apply this
14 condition, could you?

15 A. You're correct, but I think there's other
16 conditions that would apply.

17 Q. What other conditions, sir?

18 A. The Title V provisions that would require that
19 all emission units, sources, points at a facility
20 be identified and placed in the Title V permit at
21 time of application.

22 Q. Counts 1 through 5 of this criminal indictment
23 that is the subject of this criminal prosecution
24 cites this -- it cites a Condition 4, so we'll
25 presume on the permit. Since there are two, we'll

1 presume right now this is one of the options.

2 So with respect to this condition in the
3 permit, do I understand your answer to be to my
4 last question that unless you knew something about
5 the modification, what had happened, when it
6 happened, and whether it fit within the definition
7 of that term, you couldn't apply this condition,
8 could you?

9 A. Correct.

10 MR. LINSIN: I have nothing further, your
11 Honor.

12 THE COURT: Okay, Mr. Linsin. Thank you.
13 Mr. Personius, anything?

14 MR. PERSONIUS: I do not, your Honor.
15 Thank you.

16 MR. MANGO: Brief redirect, your Honor.

17 FURTHER REDIRECT EXAMINATION BY MR. MANGO:

18 Q. Mr. Sitzman, you're familiar with the term
19 "modification"?

20 A. Yes.

21 Q. Okay. If the pressure-release valve was set to
22 release at a certain setting, but the dial was then
23 turned down so it would release more frequently,
24 would that be considered a modification?

25 A. Yes.

1 Q. And how about Title V? Did Title V grandfather
2 in emission sources from 1940?

3 A. No.

4 Q. What did Title V require?

5 A. Title V required that all emission sources at a
6 facility that are regulated be included in a
7 permit.

8 MR. MANGO: Your Honor, if I may just have
9 a moment.

10 THE COURT: Sure.

11 BY MR. MANGO:

12 Q. Okay. So if I understand your testimony right,
13 every time a pressure-release valve is set at a
14 different setting, that would be considered a
15 modification?

16 A. If it was, in fact, releasing, yes.

17 Q. More frequently?

18 A. More frequently.

19 MR. MANGO: Thank you. Nothing further,
20 your Honor.

21 THE COURT: Okay.

22 FURTHER RECROSS EXAMINATION BY MR. LINSIN:

23 Q. Mr. Sitzman, you were just asked some questions
24 about modification and what your understanding of
25 that term is. You just testified on recross a

1 moment ago that you understand that that term is
2 defined in the regulations, correct?

3 A. Correct.

4 Q. And let me ask you if the following fits with
5 your understanding of what that term -- how that
6 term "modification" is defined.

7 A. Okay.

8 Q. "Any physical change or change in the method of
9 operation of an incinerator, a stationary
10 combustion installation, or process." Now, that's
11 the introductory clause -- do you recognize that as
12 the introductory clause to the definition of
13 "modification"?

14 A. Yes.

15 Q. Now, the pressure-relief valve is not an
16 incinerator, is it?

17 A. Correct.

18 Q. It's not a stationary combustion installation,
19 is it?

20 A. Correct.

21 Q. And it's not a process, is it?

22 A. Yes, it is.

23 Q. Your opinion is that a pressure-relief valve is
24 a process?

25 A. Yes.

1 Q. And the Title V permit lists out the processes
2 in the by-products area and other units within this
3 facility, doesn't it?

4 A. Yes.

5 Q. And isn't it true, sir, that every one of those
6 processes are things that actually do what you
7 would expect a process to do: To change things, to
8 physically affect the chemical composition of
9 things, and to adjust activities within the flow of
10 the operation of the plant. Isn't that how
11 "processes" are used within the context of the
12 Title V permit?

13 MR. MANGO: Objection, your Honor. It
14 seems argumentive at this point.

15 THE COURT: No, overruled. You may
16 answer. Can you answer that question?

17 THE WITNESS: Let me think back through it
18 a second.

19 BY MR. LINSIN:

20 Q. All right.

21 A. I would say this is part of a process. It's
22 controlling the whole process of the by-products
23 plant. It's one of the -- one of the components of
24 the by-products plant.

25 Q. It is a vent, isn't it, sir?

1 MR. MANGO: Objection, your Honor. This
2 is -- he's bound by the answer. He says it's a
3 process. He's now trying to argue with this
4 witness to say it's not a process.

5 THE COURT: No, it's a question. I'll
6 permit it. Overruled.

7 THE WITNESS: Yes, it's a vent, too.

8 BY MR. LINSIN:

9 Q. May I have Government Exhibit 18.18 again,
10 please. I'm sorry. In evidence. And may we go to
11 page 34 of this exhibit, please.

12 I'm going ask you, sir -- can we enlarge the
13 bottom portion of this page? Yeah. Item 34.4,
14 please.

15 Now, first of all, do you recognize this as
16 another part of Tonawanda Coke's Title V permit?

17 A. Yes.

18 Q. All right. And in Item 34.4 does it indicate
19 that it is discussing the by-products unit at that
20 facility?

21 A. Yes, it is.

22 Q. And if we can move to -- well, and at the very
23 bottom of this first entry in 34.4, it talks about
24 the process description for process A16, correct?

25 A. Yes.

1 Q. And moving on to the next page. And if we
2 could highlight, say, the top half of the page.

3 So from the preceding page, process description
4 for process A16 was, "Surges in available aqueous
5 cooling media are held in this tank" -- that is
6 tank A16 -- "for impending pumping through the
7 system," correct?

8 A. Correct.

9 Q. That's a process, right?

10 A. Correct.

11 Q. And process for -- I'm sorry -- Item 34.5
12 discusses process A17, correct?

13 A. Correct.

14 Q. "Combined flushing liquor and tar are conveyed
15 to the BH decanter, where the insoluble and heavier
16 tar settle into the bottom, the lighter aqueous
17 liquid is decanted from the top." That's a
18 process, isn't it?

19 A. Correct.

20 Q. And moving down, 34.6, please. The latter --
21 the lower -- all right.

22 34.6 describes the process for A18: "When
23 transportation is unavailable, truck or rail
24 tanker, tar is held in tanks until suitable
25 transport arrives." Again describing a tank that

1 is a part of a process, correct?

2 A. Correct.

3 Q. And the next one, please. All these are in
4 by-products, right?

5 A. Yes.

6 Q. And Item 34.7, process description for A21:
7 "Multistage centrifugal fans draw suction on the
8 coke ovens and pressurize coke oven gas to the
9 discharge side of the exhauster. Only one of the
10 three units is operated at any given time." That's
11 a process, correct?

12 A. Correct.

13 Q. Are you aware, sir -- we can take this down.
14 Thank you very much.

15 Are you aware of any place in Tonawanda Coke's
16 Title V permit where a vent is described as a
17 process?

18 A. No.

19 MR. LINSIN: I have nothing further, your
20 Honor.

21 MR. MANGO: Your Honor, so that the record
22 is not unclear. Can we please go back, Lauren, to
23 18.18, page 37.

24 FURTHER REDIRECT EXAMINATION BY MR. MANGO:

25 Q. You were just talking about the processes.

1 Just first, are you familiar that the definition of
2 process -- does this sound accurate: "Any activity
3 involving one or more emission sources that emits
4 or has the potential to emit any regulated air
5 pollutant."

6 A. Correct.

7 Q. That's your understanding of what a process is?

8 A. Yes.

9 Q. And you believe the bleeder/pressure-relief
10 valve is a process?

11 A. Yeah.

12 Q. Okay. Let's focus on Item 34.12. Talks about
13 the light oil. Do you see this? "All of the light
14 oil pumping, flanges, valves, line ends, and pumps
15 from the light oil condenser to the light oil
16 storage tank" -- sorry. Is that describing a
17 process of the flow of gas in the light oil system?

18 A. Yes.

19 MR. MANGO: Nothing further, your Honor.

20 MR. LINSIN: I have nothing further, your
21 Honor. Thank you.

22 THE COURT: Okay, Mr. Linsin. Thank you.
23 Mr. Personius?

24 MR. PERSONIUS: I'm not getting near it,
25 Judge. I have nothing.

1 THE COURT: Okay. Mr. Mango, anything
2 further?

3 MR. MANGO: No, your Honor.

4 THE COURT: All right. Ladies and
5 gentlemen, does anybody have a written question
6 that you want considered for Mr. Sitzman?

7 Okay. Chris, would you do me a favor, please?

8 I think juror number three, Mr. Collins, has a
9 question, please.

10 Okay. May I see the attorneys, please, and may
11 we have some white noise, please.

12 (Side bar discussion held on the record.)

13 THE COURT: Okay. There are two questions
14 listed on the sheet. The first question is this:
15 "While looking at the chart with the PRV listed,
16 did you say the emissions listed referenced leaks
17 or releases?" That's the question. Leaks or
18 releases.

19 MR. LINSIN: Well, could I ask you to
20 reread it, your Honor. While looking at the
21 chart --

22 THE COURT: With the PRV listed --

23 MR. PIAGGIONE: He's talking about the
24 table in the HAP report, is what he's referring to.

25 MR. MANGO: Yes. We talked about the

1 footnote.

2 MR. LINSIN: Okay.

3 MR. MANGO: 4-2.

4 THE COURT: "Did you say the emissions
5 listed referenced leaks or releases?" I think that
6 question works.

7 MR. MANGO: Yes, I think that's fair.

8 THE COURT: That's a good question. Okay.

9 The second question is this: "Do you know if
10 the PRV listed in the chart" and there's a
11 bracket -- eight days, one...

12 MR. MANGO: It says 1 PRV.

13 THE COURT: It says one PRV, but I don't
14 know if it's eight days.

15 MR. LINSIN: Says 1 PRV.

16 THE COURT: Yeah, but eight what?

17 MR. MANGO: I don't see an eight.

18 MR. LINSIN: I think it says, "says 1
19 PRV," not an eight.

20 THE COURT: Well, what's this?

21 MR. LINSIN: That's paren --

22 MR. MANGO: Parentheses.

23 THE COURT: Yeah, a parentheses, and what
24 are the letters and number?

25 MR. MANGO: I think that's his S.

1 MR. LINSIN: That's an S-A-Y -- I read
2 that as S-A-Y-S. "Says 1 PRV."

3 THE COURT: Oh. Okay. "Says 1 PRV."
4 Thank you. "Is the one on the COG gas line or
5 light oil scrub?"

6 MR. MANGO: Okay.

7 MR. LINSIN: Okay.

8 MR. MANGO: It sounds like the questions
9 are related to that Exhibit 131. Would you like me
10 to have Lauren pull that up?

11 THE COURT: Yes.

12 MR. MANGO: And that page?

13 THE COURT: Mr. Linsin?

14 MR. LINSIN: That is fine. I agree. I
15 think it would be helpful.

16 THE COURT: All right. And Mr. Personius?

17 MR. PERSONIUS: Yes.

18 THE COURT: Okay.

19 MR. MANGO: If -- your Honor, if there's
20 some interpretation, you know, because they may not
21 be a perfectly worded question, is that something
22 you would -- if there's some additional follow-up,
23 is that something your Honor could do with the
24 witness, just to kind of clarify?

25 THE COURT: I will ask the witness if that

1 satisfies his request for the questions asked.

2 MR. LINSIN: You will ask the juror?

3 THE COURT: I will ask the juror. Okay?

4 MR. LINSIN: Okay.

5 MR. MANGO: Great.

6 THE COURT: And then if he says not, then
7 we'll have to have him write out another question
8 and proceed on that basis.

9 MR. MANGO: Great.

10 THE COURT: Okay. Okay.

11 MR. MANGO: Thank you.

12 (End of side bar.)

13 THE COURT: Okay. There are two
14 questions, Mr. Sitzman, and I'm going to ask both.
15 And you have on the screen the exhibit to which it
16 is believed that the questions apply, as a point of
17 reference.

18 And what's the exhibit number on that,
19 Mr. Mango?

20 MR. MANGO: 131, your Honor, page 4-2.

21 THE COURT: Okay. I'm going to ask you
22 the two questions. I'm going to ask you to answer
23 each. And then once that's done, I will ask the
24 juror if the questions asked are in fact what the
25 juror -- what you, Mr. Collins, wanted asked. And

1 then if there are any follow-up questions of the
2 witness after he answers the questions, I'll allow
3 the attorneys to follow up with additional
4 examination. Okay?

5 All right. Question number 1, Mr. Sitzman:
6 While looking at the chart with the PRV listed, did
7 you say the emissions listed referenced leaks or
8 releases, question mark.

9 THE WITNESS: This chart represents leaks
10 from the valve.

11 THE COURT: Okay. And the second question
12 is: Do you know if the PRV that's listed in the
13 chart, and that's 1 PRV, is the one on the COG gas
14 line or the light oil scrubber, question mark.

15 THE WITNESS: I don't know, according to
16 the chart.

17 THE COURT: Okay.

18 MR. MANGO: No follow-up on the government
19 side, your Honor.

20 THE COURT: All right. Let me ask
21 Mr. Collins.

22 Mr. Collins, those are your two questions,
23 correct?

24 A JUROR: Yes.

25 THE COURT: And those are the questions

1 you intended to be asked?

2 A JUROR: Yes.

3 THE COURT: Okay. All right. Mr. Linsin?

4 FURTHER CROSS-EXAMINATION BY MR. LINSIN:

5 Q. Could we please just enlarge the lower half of
6 the page.

7 Now, you're familiar with the light oil
8 scrubber at the Tonawanda Coke facility, are you?

9 A. Yes.

10 Q. And is it accurate, sir, that the light oil
11 scrubber is part of the light oil system at the
12 plant?

13 A. Yes.

14 Q. All right. So, at the top of what's been
15 enlarged here you see a block for the light oil
16 system, correct?

17 A. Correct.

18 Q. And the PRV that is referenced in the lower
19 section relates to a pressure-relief valve on the
20 coke oven gas system, correct?

21 A. Correct.

22 Q. Now, with that background, does that alter the
23 response that you just gave to the second question
24 that the Judge posed to you?

25 MR. MANGO: Your Honor, I'm going to

1 object. He answered the question the juror asked.

2 THE COURT: It's a fair question. That's
3 actually cross-examination on the answer. Yes.

4 THE WITNESS: Could you ask me the
5 question again, your Honor?

6 THE COURT: Certainly. All right. Do you
7 know if the PRV listed in the chart -- and it says
8 1 PRV -- is the one on the COG gas line or light
9 oil scrubber?

10 THE WITNESS: Light oil scrubber --

11 Okay. If I could, I remember seeing an
12 application in our file for a pressure-relief valve
13 on the light oil scrubber. And that is a different
14 part of the system, and it's not -- in fact, not
15 listed on here, even though that -- that exists on
16 it. So the pressure-relief valve on the coke oven
17 gas system that's listed in that table would be
18 that one or another one, if it existed in the
19 system.

20 MR. LINSIN: On the coke oven gas line,
21 correct?

22 THE WITNESS: On the coke oven gas line.

23 MR. LINSIN: Nothing further. Thank you,
24 your Honor.

25 THE COURT: Okay.

1 MR. MANGO: Just one follow-up question,
2 your Honor.

3 THE COURT: Thank you.

4 MR. MANGO: Mr. Sitzman, are you aware
5 that the light oil scrubber, as used, that term,
6 that's connected -- is that connected to the coke
7 oven gas system?

8 THE WITNESS: Yes. It's all part of the
9 by-products plant.

10 MR. MANGO: Thank you. Nothing else, your
11 Honor.

12 THE COURT: Mr. Linsin?

13 MR. LINSIN: I have nothing further.

14 THE COURT: Okay. Mr. Personius?

15 MR. PERSONIUS: No, your Honor. Thank
16 you.

17 THE COURT: Okay. All right.

18 Mr. Collins, thank you for those questions.

19 All right. Mr. Sitzman, you're excused. Thank
20 you very much. Appreciate it.

21 Okay. Next witness, please.

22 MR. PIAGGIONE: Your Honor, the government
23 would call Jon Rogers.

24 THE COURT: Everybody okay, ladies and
25 gentlemen? Do you need a break or -- you do need a

1 break. Okay. Let's take ten minutes or so, and
2 then we'll be back.

3 (Jury excused from the courtroom.)

4 THE COURT: Okay. It will be about ten
5 minutes. Five of twelve we'll get started.

6 (Short recess was taken.)

7 (Jury seated.)

8 THE COURT: Welcome back, ladies and
9 gentlemen. Please have a seat.

10 Okay, Mr. Rogers, you want to come on up? The
11 attorneys and parties are back present. Our jury
12 is back, ready to go, roll call waived. And we're
13 still on the government's case.

14 If you stay right there. Ms. Labuzzetta, if
15 you would administer the oath.

16 J O N R O G E R S, having been duly sworn as a
17 witness, testified as follows:

18 THE COURT: Morning, sir.

19 THE WITNESS: Morning.

20 THE COURT: Okay. Have a seat, make
21 yourself comfortable. A couple of very preliminary
22 instructions. You seem to know the routine. I'm
23 going to ask you to speak towards the jury, because
24 you are here to testify for their benefit. It's
25 important that you answer the questions as best you

1 can. Make sure you understand the question. If
2 you don't, if I ask the question or any of the
3 attorneys, just let me know. I'll have the
4 attorneys or I will rephrase the question until you
5 understand it.

6 Try to be as succinct with your answers as you
7 can. Don't volunteer information. That seems to
8 always complicate things. If you can answer a
9 question yes or no, please try to do that. That's
10 somewhat helpful.

11 If there's an objection, wait until I rule on
12 the objection, then I will tell you by instruction
13 whether to complete your answer, restate your
14 answer, or wait for another question. Do you
15 understand?

16 THE WITNESS: Yes.

17 THE COURT: We need you to speak in a
18 conversational tone at the microphone. The
19 microphone is friendly, but it needs to pick you
20 up. So state your full name so we can hear how
21 you're going to do, and spell your last name.
22 Okay?

23 THE WITNESS: Jon Rogers, R-O-G-E-R-S.

24 THE COURT: You'll have to get a little
25 closer than that, and I think that will help.

1 All right. Mr. Piaggione, your witness.

2 MR. PIAGGIONE: Thank you, your Honor.

3 DIRECT EXAMINATION BY MR. PIAGGIONE:

4 Q. Mr. Rogers, we've met several times before, is
5 that correct?

6 A. Yes.

7 Q. And you've expressed a great deal of
8 nervousness about being here?

9 A. Yes.

10 Q. In fact, you've broken out in hives, is that
11 correct?

12 A. Yes, I have.

13 Q. Okay. Just try and take your time, take deep
14 breaths, and just respond to the questions if you
15 could. Okay?

16 A. Yes.

17 Q. Where are you employed?

18 A. Tonawanda Coke.

19 Q. When did you start?

20 A. March of 1978.

21 Q. All right. So you've been working at Tonawanda
22 Coke since?

23 A. Yes.

24 Q. Okay. And what positions have you held with
25 Tonawanda Coke?

1 A. I started as a maintenance man, became a
2 maintenance supervisor, special projects, on to the
3 railroad, coke handling, coal handling, and a good
4 share of other jobs throughout the plant.

5 Q. So as a maintenance worker, did you -- have you
6 worked in virtually all the yard grounds of the
7 Tonawanda Coke?

8 A. Yes, I have.

9 Q. Okay. And did that include the period between
10 2005 and 2009?

11 A. Yes, it did.

12 Q. All right. Did you ever work with a bleeder
13 valve in the by-products area?

14 A. Yes, I did.

15 Q. All right. What work did you do there?

16 A. Repaired steam lines on it, did some crane work
17 with it.

18 Q. Okay. So you weren't the operator of the
19 valve?

20 A. No, I was not.

21 Q. Did you install it?

22 A. No, I did not.

23 Q. Okay. Did you work on the installment?

24 A. I think I was a crane operator.

25 Q. Okay. So that was during your employment

1 between 1978 and 2009, is that correct?

2 A. Yes.

3 Q. Do you know approximately when that was?

4 A. No, I don't.

5 Q. Okay. Did you ever see that bleeder valve
6 release?

7 A. Yes, I did.

8 Q. All right. Have you ever been near the bleeder
9 in the wintertime?

10 A. Yes, I have.

11 Q. Describe what, if anything, you would observe
12 when you were near the bleeder in the winter.

13 A. Moisture on the ground and naphthalene
14 crystals.

15 Q. Okay. And you said you saw it release. How
16 often did you see it release?

17 A. Frequently.

18 Q. Okay. Can you tell us if it was related to the
19 reversals at the battery or not?

20 A. Yes, it was.

21 Q. Do you recall ever working at Tonawanda Coke
22 when the bleeder was hit by lightening?

23 A. Yes.

24 Q. Do you know approximately when that happened?

25 A. No, I don't.

1 Q. Did you respond to it?

2 A. Yes, I did.

3 Q. What did you see?

4 A. About a 10- to 12-foot flame.

5 Q. Okay. And did you work on extinguishing it?

6 A. Yes, I did.

7 Q. What did you do?

8 A. Introduced steam and increased the set point or
9 the -- to close the valve.

10 Q. How long did it take to get that under control?

11 A. Thirty minutes.

12 Q. All right. To your knowledge was that bleeder
13 valve hit by lightening again?

14 A. One other time that I remember.

15 Q. Okay. Did you see the bleeder valve release
16 between 2005 and 2009?

17 A. Yes, I did.

18 Q. And how often did that happen?

19 A. Frequently.

20 Q. Do you know Mark Kamholz?

21 A. Yes, I do.

22 Q. How long have you known him?

23 A. Since I started there.

24 Q. All right. Is he in the courtroom today?

25 A. Yes, he is.

1 Q. Can you point him out?

2 A. Right there.

3 MR. PIAGGIONE: Okay. Let the record
4 reflect that the witness has identified
5 Mr. Kamholz.

6 THE COURT: Yeah, the record will so
7 reflect, and Mark Kamholz the defendant has been
8 identified by Mr. Rogers.

9 BY MR. PIAGGIONE:

10 Q. Okay. Who is the environmental control manager
11 at Tonawanda Coke Corporation?

12 A. Mark Kamholz.

13 Q. Okay. If -- did Mark Kamholz, as environmental
14 control manager, have the authority to give you
15 directions?

16 A. Yes, he did.

17 Q. And if Mark Kamholz, as the environmental
18 control manager, gave you an order to perform some
19 work at Tonawanda Coke, did you have to do it?

20 A. Yes.

21 Q. Can you recall an example of when Mark Kamholz,
22 as the environmental control manager, gave you an
23 order to do some work at Tonawanda Coke?

24 A. I dug a settling pond for him.

25 Q. Okay. In the course of your duties working at

1 the -- in the by-products area, did you ever see
2 Mr. Kamholz in that area?

3 A. Yes.

4 Q. How often did you see him there?

5 A. Frequently.

6 Q. Okay. Did you see him in the by-products area
7 between 2005 and 2009?

8 A. Yes.

9 Q. All right. And how often did you see Mark
10 Kamholz in the by-products area during the period
11 between 2005 and 2009?

12 A. Sorry, repeat that.

13 Q. Okay. How often did you see Mr. Kamholz in the
14 by-products area during the period between 2005
15 and 2009?

16 A. Frequently.

17 Q. Okay. Did you bother to count how many times
18 you saw Mr. Kamholz in the by-products area?

19 A. No, I didn't.

20 Q. In the course of your employment at Tonawanda
21 Coke since 1978 through 2009, who, if any one, in
22 Tonawanda Coke had the responsibility to determine
23 if the bleeder valve in the by-products area needed
24 a permit to comply with the Clean Air Act?

25 MR. PERSONIUS: Objection, your Honor.

1 THE COURT: Sustained.

2 MR. PIAGGIONE: Do you know who in
3 Tonawanda Coke had the responsibility to determine
4 if the bleeder valve in the by-products area needed
5 a permit to comply with the Clean Air Act?

6 MR. LINSIN: Objection, your Honor, same
7 question.

8 THE COURT: It is. Sustained.

9 MR. PIAGGIONE: If the -- if the bleeder
10 valve in the by-products area needed a flare to
11 comply with the Clean Air Act, who would determine
12 that?

13 MR. LINSIN: Objection, your Honor. First
14 of all, it's a hypothetical question, and there's
15 no foundation at all with this witness for this
16 kind of -- line of questioning.

17 THE COURT: I mean, it's -- I mean, it's
18 certainly compound in terms of what you're asking
19 for, so I'll sustain the objection.

20 BY MR. PIAGGIONE:

21 Q. In the course of your employment at Tonawanda
22 Coke, who has the responsibility to determine
23 compliance with the environmental regulations at
24 the facility?

25 A. Mark Kamholz.

1 Q. Okay. And would that include whether or not a
2 bleeder valve in the by-products area needed a
3 permit or not?

4 MR. PERSONIUS: Objection.

5 THE COURT: Foundation? Grounds.
6 Sustained.

7 MR. PIAGGIONE: If a valve needed a permit
8 pursuant -- who determined whether or not a valve
9 at Tonawanda Coke needed a valve -- needed a permit
10 for a valve in the by-products area?

11 MR. PERSONIUS: Objection, foundation.

12 THE COURT: And form. Sustained.

13 MR. PIAGGIONE: Yes. Okay. I'm sorry.
14 Withdrawn.

15 Who determined at Tonawanda Coke if something
16 was subject to environmental regulations at
17 Tonawanda Coke?

18 MR. PERSONIUS: Objection, asked and
19 answered.

20 THE COURT: No, I'll permit that.

21 THE WITNESS: Mark Kamholz.

22 BY MR. PIAGGIONE:

23 Q. Okay. So if you -- that's good enough. In the
24 course of your duties, did you work in the area
25 between the ovens and the quench towers?

1 A. Yes, I did.

2 Q. What was the work you did in that area?

3 A. Railroad work.

4 Q. What is the time frame you're talking about?

5 A. From 1991 until present.

6 Q. Okay. In the course of your duties did you
7 ever look inside the quench towers?

8 A. Yes, I did.

9 Q. When you started were there baffles in those
10 towers?

11 A. Yes, there were.

12 Q. Okay. In the east tower?

13 A. Yes.

14 Q. How about the west tower?

15 A. No.

16 Q. Okay. Did there come a time that the east
17 tower no longer had baffles?

18 A. When it was shortened.

19 Q. Okay. And do you recall when that happened?

20 A. I don't.

21 Q. Okay. So when it was shortened, was the
22 baffles replaced, or was it just never put in?

23 A. Not that I know of.

24 Q. Okay. Were you in the east quench tower after
25 the tower was shortened?

1 A. Yes.

2 Q. Okay. And did it have baffles?

3 A. No.

4 Q. Okay. Were you ever in the east quench tower
5 between the period of 2005 and October 2009?

6 A. Yes.

7 Q. Did the east quench tower have baffles then?

8 A. No.

9 Q. Did there come a time when you had discussion
10 with Mark Kamholz about no baffles in the tower?

11 A. Yes.

12 Q. Okay. Can you please describe the
13 circumstances leading up to that discussion?

14 A. There was an article in the Tonawanda News that
15 stated there was baffles in that tower. I went to
16 Mr. Crane and told him there weren't. And --

17 MR. LINSIN: Objection, nonresponsive.

18 Question related to a conversation with
19 Mr. Kamholz.

20 THE COURT: Yeah. Do you want me to
21 strike that answer?

22 MR. LINSIN: Yes, please.

23 THE COURT: Okay. I'll grant the motion
24 to strike.

25 You may have heard that, ladies and gentlemen,

1 but it's not proper for you to consider it in
2 connection with the question that was asked, so
3 disregard it, please.

4 BY MR. PIAGGIONE:

5 Q. Did you have a discussion with Mr. Kamholz
6 about the lack of baffles in the east quench tower?

7 A. I asked him why he didn't tell Mr. Crane about
8 it.

9 Q. Okay. What was his response?

10 A. He said he did.

11 Q. Okay.

12 MR. PERSONIUS: Could we have, while we're
13 on the subject, a time frame please, Judge?

14 THE COURT: Yes.

15 BY MR. PIAGGIONE:

16 Q. Sure. Do you recall when this was
17 approximately?

18 A. No, I don't.

19 Q. Was it in 2009?

20 MR. LINSIN: Objection.

21 THE WITNESS: I'm sorry, I don't.

22 THE COURT: Leading?

23 MR. LINSIN: The witness has just
24 testified he doesn't remember.

25 MR. PIAGGIONE: Your Honor, if I can, I

1 believe he can recall the dates based upon events,
2 so I can ask him about an event --

3 THE COURT: Based upon events?

4 MR. PIAGGIONE: Yes.

5 MR. LINSIN: Then --

6 THE COURT: Okay.

7 BY MR. PIAGGIONE:

8 Q. All right. Do you recall when the baffles were
9 installed in the east quench tower?

10 A. No, I don't, I'm sorry.

11 Q. Do you recall the baffles being installed in
12 the east quench tower?

13 A. Yes, I do.

14 Q. Okay. What was the time period preceding that
15 that you had the conversation with Mr. Kamholz?

16 A. Short -- short time. Less than a month.

17 MR. PIAGGIONE: Okay. And then subject to
18 connection as to when the baffles were placed in
19 the tower, your Honor, with subsequent evidence we
20 can identify that time frame.

21 THE COURT: I'm not sure what you're
22 asking for, Mr. Piaggione.

23 MR. PIAGGIONE: I'm just saying, your
24 Honor, that he relates it to that, and subsequent
25 evidence will indicate what date that was.

1 Approximately.

2 THE COURT: Okay. You may continue. Keep
3 your voice up too when the ask the questions,
4 because you're trailing I think, unless it's my
5 hearing again. No, not this time?

6 MR. PIAGGIONE: Okay. I'll speak up, your
7 Honor. I think I've been sitting too long.

8 Based upon your experience at Tonawanda Coke
9 regarding environmental issues -- excuse me.
10 Withdrawn. During the course of your duties at
11 Tonawanda Coke, if there was a question about
12 environmental compliance, who did you ask?

13 MR. LINSIN: Your Honor, I'm going to
14 object. I think this is the third time this
15 question has been asked. And answered.

16 THE COURT: You know, I'm not sure. I
17 think it is different. I'll permit it. I'm not
18 sure it's necessarily relevant. But, you know, I
19 guess subject to connecting up, overruled.

20 MR. PERSONIUS: If it speeds it along,
21 I'll stipulate that Mr. Kamholz was the
22 environmental control manager at Tonawanda Coke.
23 And he handled environmental issues. If that's
24 helpful. We don't dispute, Judge.

25 THE COURT: Okay. Lets --

1 MR. PERSONIUS: So we can move along.

2 THE COURT: Let's go from there,

3 Mr. Piaggione.

4 BY MR. PIAGGIONE:

5 Q. Okay. In the course of your duties have you
6 had to deal with the coal tar bin?

7 A. Yes, I have.

8 Q. And where is that located?

9 A. Broadway in the by-products department.

10 Q. I'm asking for Exhibit 3.11, which I believe is
11 already in evidence.

12 Can you identify that, sir?

13 A. That's the tar bin.

14 Q. Okay. And what, if anything, did your duties
15 have to do with the tar box?

16 A. If I saw it needed cleaning, I would call an
17 end loader to clean it.

18 Q. How was it emptied?

19 A. The end loader would line himself up, put the
20 bucket in there, get the bucket full, let it drip
21 off, and take it to the coal field.

22 Q. And where was it taken?

23 A. To the coal field.

24 Q. Would you give the operator of the front end
25 loader which coal pile to take it to?

1 A. No, I wouldn't.

2 Q. Did you ever empty the tar box?

3 A. Yes.

4 Q. Okay. Did you ever observe the coal being
5 mixed with the coal tar sludge?

6 A. Yes.

7 Q. All right. And describe what you observed.

8 A. The end loader would drive up to the pile, put
9 the bucket up high. In the process of dumping the
10 bucket into the pile, the tar would be up on the
11 pile. He would back drag it, and then put more
12 coal over it. Back drag it, put more coal over it
13 to mix it in.

14 Q. Did you observe it hit the ground at any time
15 during the process?

16 A. Once in a while.

17 Q. Okay. Was there anyone telling you not to have
18 the coal tar reach the ground while mixing?

19 A. No.

20 Q. Was there any precautions made to prevent it
21 from being hit by the rain or the snow?

22 A. No.

23 Q. Was there any lateral walls around it to
24 prevent it from spreading out?

25 A. No.

1 Q. Did you observe that when you first started at
2 Tonawanda Coke Corporation?

3 A. Yes.

4 Q. Have you seen this mix of coal pile taken for
5 use in the coke ovens?

6 A. Yes.

7 Q. Did there come a time when you -- when a wall,
8 concrete pad was installed near the coal field?

9 A. Yes.

10 Q. Do you recall when that was?

11 A. No.

12 Q. Did the installation of the pad change when the
13 tar box was emptied?

14 A. No.

15 Q. Did you observe others empty the tar box after
16 the pad was installed?

17 A. Yes.

18 Q. Where did you observe them put the coal tar
19 sludge?

20 A. Coal piles.

21 Q. How often did you observe that?

22 A. Sometimes daily, sometimes not as frequently.

23 Q. All right. Did there come a time when bringing
24 the tar box sludge directly to the coal fields
25 stopped?

1 A. Yes.

2 Q. When was that if you can recall?

3 A. After the search warrant.

4 Q. Okay. And prior to that event, did you ever
5 observe coal tar sludge on the concrete pad?

6 A. Yes.

7 Q. Okay. Ms. DiFillipo, can you put up
8 Exhibit 303, which is also in evidence?

9 And can you tell us what that is?

10 A. It's coal tar sludge.

11 Q. Okay. And can we have -- is that the -- coal
12 tar sludge where?

13 A. On the concrete pad.

14 Q. All right. So that's the pad with coal tar
15 sludge on it?

16 A. Yes.

17 THE COURT: Speak into the microphone,
18 please.

19 THE WITNESS: Yes.

20 THE COURT: Thank you.

21 BY MR. PIAGGIONE:

22 Q. I'd ask you if you can identify what I'm going
23 to point out in that lower left-hand corner.

24 A. That's the ramp for the pug mill.

25 Q. Can I have Exhibit 3.02 please?

1 Can you identify that picture?

2 A. That's the pug mill.

3 Q. That's already in evidence.

4 THE CLERK: You need to say that.

5 MR. PIAGGIONE: Okay, I'm sorry.

6 BY MR. PIAGGIONE:

7 Q. And can you identify that object?

8 A. That's the pug mill.

9 Q. Okay. What was the purpose of the pug mill?

10 A. It's a mixing device to mix product.

11 Q. Was it supposed to mix the coal tar sludge on
12 the pad with coal?

13 A. It was supposed to mix or -- mix the coal tar
14 up and either put it on the coal or mix it with
15 coal, yes.

16 Q. Okay. Where would the material be placed after
17 it was mixed from the pad through the machine?

18 A. On to a conveyor belt and up through the
19 system.

20 Q. So with this process, would the coal tar sludge
21 touch the ground in any way?

22 A. No.

23 Q. Do you know how long that machine was in
24 operation?

25 A. It was attempted to be used, but it was a short

1 period of time.

2 Q. And do you know if there was any problems with
3 running that particular --

4 A. Yes. It was very difficult to use.

5 Q. Okay. I'm going to go to Exhibit 125.03, which
6 is already in evidence.

7 Ask you if you can recognize that.

8 A. Yes. It's the area around the tanks that
9 burned.

10 Q. Okay. When did you first observe that area, do
11 you know?

12 A. Early 1980s.

13 Q. Okay. And can you describe what it was like to
14 try and walk in that area at that time?

15 A. There was spots of tar.

16 Q. Okay. When you say "spots of tar", what do you
17 mean?

18 A. It wasn't the whole surface that was covered.
19 There was just spots of tar here and there.

20 Q. And how big of an area are we talking about?

21 A. 250 feet square.

22 Q. All right. And on the spots of tar, what was
23 it like to try and walk in those spots?

24 A. You'd try not to step in the tar.

25 Q. Okay. Without mentioning the event that causes

1 you to remember this, did there come a time in 1998
2 when the surface of that area was modified in any
3 way?

4 A. Yes. A share of the area approximately 150
5 feet square was filled in.

6 Q. And what was it filled in with?

7 A. Coke breeze.

8 Q. And what, if anything, did you observe happen
9 to that tar sludge over time as a result of that
10 filling in?

11 A. The tar sludge was compacted or forced into a
12 smaller area around the tanks themselves.

13 Q. Okay. So it moved, the tar sludge moved?

14 A. Yes. Depressed. The process of filling the
15 area in would cause the tar to move to a -- to the
16 low area.

17 Q. Would that include equipment running over
18 the --

19 A. Yes.

20 Q. Okay. Now, how long of an area was the tar
21 sludge then?

22 A. It was into an area approximately a hundred --
23 a hundred feet square, but the tanks were also in
24 that area.

25 Q. Okay. How deep was it, if you know?

1 A. After the fire it was 2 to 3 feet between the
2 tanks.

3 Q. Okay. And you mentioned a fire. Now, was that
4 fire involving near the storage tanks?

5 A. Yes, it was.

6 Q. Okay. I'd like to have -- do you know what
7 date that was?

8 A. July of 2008.

9 Q. Okay. Now, did you respond to the fire?

10 A. Yes, I did.

11 Q. All right. Can you tell us what the fire --
12 how big the fire was?

13 A. It incorporated a good share of the area.

14 Q. Okay. Now, what was in the tanks that --
15 before the fire occurred?

16 A. Tar sludge.

17 Q. Okay. How do you know that?

18 A. There were holes. The tanks were starting to
19 rust. There were holes in them. You could see
20 into them.

21 Q. And when the fire occurred, what was on fire?

22 A. The actual tar around the tanks.

23 Q. Okay. So this was the tar that had been moved
24 over towards the tanks?

25 A. Yes.

1 Q. Okay. Now, in the course of your duties, did
2 there come a time that you informed that there
3 was going -- they were going to scrap those tanks?

4 A. Yes.

5 Q. Okay. And what, if anything, did you do?

6 A. I filled right around the tanks themselves with
7 more coke breeze to allow access of machinery to
8 take the tanks down.

9 Q. And how much coal breeze did you put down?

10 A. Approximately 10 buckets, 50 tons.

11 Q. Okay. And what happened to the coal tar
12 sludge?

13 A. It was combined into an even smaller area.

14 Q. Okay. Now, this was before the fire or after
15 the fire that you did that?

16 A. This was before the fire.

17 Q. Okay. Did you observe the fire -- I'm sorry.
18 Withdrawn.

19 After this fire, did you speak to Mr. Kamholz
20 about the tanks?

21 A. Yes.

22 Q. What did you want to do, if anything?

23 A. Clean up the remaining scrap metal and process
24 the tar sludge.

25 Q. Okay. And you asked Mr. Kamholz's permission

1 to do that?

2 A. Yes.

3 Q. Okay. And how long after the fire did you
4 speak to Mr. Kamholz about the tanks?

5 A. It was approximately nine months.

6 Q. And what was his response?

7 A. The first time no.

8 Q. Did he explain why?

9 A. No.

10 Q. Did you ask him more than once?

11 A. Yes.

12 Q. Okay. Did there come a time he gave you
13 approval to remove the remnants of the tanks?

14 A. Yes.

15 Q. Approximately how long after the fire was that?

16 A. It was approximately a year.

17 Q. Okay. And what, if anything, did you do?

18 A. Removed the scrap metal, and then started
19 removing the tar sludge from the tanks.

20 Q. Okay. I'm going to go to what's already in
21 evidence as Exhibit 3.05 please.

22 Okay. Now do you recognize that photograph?

23 A. Yes.

24 Q. Okay. Can you tell us what we are looking at?

25 A. Yes. That's one of the tanks that was

1 disassembled, and that's the tar sludge in the
2 tank.

3 Q. Okay. And show this area I'm going mark.

4 What is that?

5 A. That was the area we filled in around the tanks
6 for access.

7 Q. Okay. And what is in the -- in this area?

8 A. That's the tar sludge.

9 Q. Okay. So was there a difference between the
10 material outside the tank and inside the tanks?

11 A. The stuff outside the tank had coke breeze in
12 it. The stuff inside the tank didn't.

13 Q. Okay. So what did you do, if anything, with
14 the contents of the tank?

15 A. Removed it with an excavator, put it in an end
16 loader bucket, and mixed in the coal piles.

17 Q. Did anyone tell you not to prevent the stuff
18 from being mixed on the ground?

19 A. No.

20 Q. Was there any attempt to prevent the material
21 from hitting the ground?

22 A. No.

23 Q. I'm going to go to Exhibit 136.01. It's not in
24 evidence, for identification only.

25 Now I'm going ask you if you recognize that

1 photograph?

2 A. That's the tar tank.

3 Q. Okay. And does that depict what the -- what
4 the tanks looked like when you were working on
5 them?

6 A. Yes.

7 Q. Okay. Is it a fair and accurate representation
8 of what you observed?

9 A. Yes.

10 MR. PIAGGIONE: Your Honor, I would move
11 to have this introduced into evidence as 136.01.

12 MR. LINSIN: No objection, your Honor.

13 MR. PERSONIUS: No objection, your Honor.

14 THE COURT: Okay. 136.01 received, no
15 objection.

16 (Government's Exhibit 136.01 was received
17 into evidence.)

18 BY MR. PIAGGIONE:

19 Q. Now, in the background -- what's in the
20 background of that photograph?

21 A. Coal pile.

22 Q. Is that where you brought the coal tar sludge?

23 A. Yes.

24 Q. Okay. We'll go to marked for Government's --
25 for identification 136.02 please.

1 Okay. I ask you if you can recognize that
2 photograph?

3 A. Yes. Again, the same tanks.

4 Q. And is that a fair and accurate depiction of
5 the area that you worked on to remove the coal tar
6 sludge?

7 A. Yes.

8 THE COURT: Speak into that microphone,
9 please.

10 MR. PIAGGIONE: Yes, your Honor. I'm
11 having a little trouble with my throat, and I
12 apologize.

13 Is that a fair and accurate representation of
14 what you observed at the time?

15 THE WITNESS: Yes.

16 MR. PIAGGIONE: Okay. At this time the
17 government would introduce this into evidence as
18 Government Exhibit 136.02.

19 MR. LINSIN: No objection, Judge.

20 MR. PERSONIUS: No objection.

21 THE COURT: All right. 136.02 received,
22 no objection. May be published.

23 (Government's Exhibit 136.02 was received
24 into evidence.)

25 BY MR. PIAGGIONE:

1 Q. Can you describe to the jury what we're looking
2 at here?

3 A. That's the disassembled tank with the tar
4 sludge inside of it, and you can see the marks from
5 the excavator removing some of the tar sludge.

6 THE COURT: All right. Point to that area
7 please. Tap the screen good. Thank you.

8 BY MR. PIAGGIONE:

9 Q. Okay. And is that the metal you scrapped
10 around it?

11 A. Yes.

12 Q. Okay. And the road in front of it, is that
13 what you put in to get access to the coal tar
14 sludge?

15 A. Yes.

16 Q. Okay. Okay. We will move on to 136.10 for
17 identification please.

18 Do you recognize that?

19 A. Yes.

20 Q. What is that?

21 A. Different picture of the same thing.

22 Q. Okay. Is that a fair and accurate depiction --

23 MR. LINSIN: Your Honor, we have no
24 objection to the admission of the photograph if
25 that's where we're going.

1 THE COURT: Okay. 136.10, Mr. Personius?

2 MR. PERSONIUS: No objection, Judge.

3 THE COURT: That will be received, no
4 objection.

5 (Government's Exhibit 136.10 was received
6 into evidence.)

7 BY MR. PIAGGIONE:

8 Q. Mr. Rogers, I'd ask you if you can explain to
9 the jury what we're looking at.

10 A. We're looking at the tank where the tar sludge
11 was removed.

12 Q. Okay. And I'll ask you, is this the wall of
13 the tank?

14 A. Yes, it is.

15 Q. All right. And this is the insides of the
16 tank?

17 A. Yes.

18 Q. And I notice that it goes down. Is that the
19 marks of the excavator?

20 A. Yes.

21 Q. Okay. How deep did that go down?

22 A. Approximately 5 feet.

23 Q. Okay. So it was about 5 feet below the
24 surface --

25 A. Yes.

1 Q. -- of coal tar sludge?

2 A. Right.

3 Q. You brought that where?

4 A. To the coal piles.

5 Q. Okay. And you mixed it on the ground there?

6 A. In the coal piles.

7 Q. And was there anything to prevent it from
8 hitting the ground?

9 A. No.

10 Q. Was the coal piles on the ground?

11 A. Yes.

12 Q. We'll go on to Government Exhibit 136.12 for
13 identification only.

14 THE COURT: What's the number again?

15 MR. PIAGGIONE: 136.12.

16 THE COURT: I don't think you have that
17 listed.

18 MR. PIAGGIONE: Eleven, I'm sorry.

19 THE COURT: Okay. Do we have any
20 objection?

21 MR. LINSIN: No objection, your Honor.

22 MR. PERSONIUS: None, your Honor. Thank
23 you.

24 THE COURT: Okay. 136.11, no objection,
25 received. And may be published.

1 (Government's Exhibit 136.11 was received
2 into evidence.)

3 MR. PIAGGIONE: Thank you, your Honor.

4 BY MR. PIAGGIONE:

5 Q. Could you explain what we're looking at here?

6 A. That's the other tank.

7 Q. Okay. So that was -- there was two tanks
8 involved, and this was the second one?

9 A. Yes.

10 Q. Okay. And is that the walls of the tank?

11 A. Yes.

12 Q. And what is this material in front of it?

13 A. That's the coke breeze that was put in there as
14 fill.

15 Q. Okay. And what's inside here?

16 A. That's tar sludge.

17 Q. And where did that tar sludge go?

18 A. To the coal field.

19 Q. And did you mix it with the coal there?

20 A. Yes.

21 Q. Was the coal piles on the ground?

22 A. Yes.

23 Q. Was there anything to prevent the material from
24 hitting the ground?

25 A. No.

1 Q. Was there anything to prevent it -- from the
2 rain falling on it?

3 A. No.

4 Q. Did anyone tell you not to put it on the
5 ground?

6 A. No.

7 Q. Incidentally, were you -- did there come a time
8 that you observed samplers taking samples in this
9 location?

10 A. Yes.

11 Q. Can you tell us what happened to one of the
12 samplers, if anything?

13 A. He took a step into one of the areas that was
14 relatively deep, got his boot stuck.

15 Q. What happened? Did he need help to get out?

16 A. Yes, he did.

17 MR. PIAGGIONE: At this point I have no
18 further questions of this witness.

19 THE COURT: Okay. Put that back up,
20 please.

21 All right. This is 136.11. The top portion of
22 that, Mr. Rogers, is that what you said was the
23 coal tar sludge?

24 THE WITNESS: Yes.

25 THE COURT: Is that in the tank?

1 THE WITNESS: Yes.

2 THE COURT: Okay. And the walls of the
3 tank are how deep?

4 THE WITNESS: From the surface you're
5 looking at, they probably go down another 3 feet.

6 THE COURT: Okay. And the tank itself, is
7 it entirely metal?

8 THE WITNESS: Yes.

9 THE COURT: Is there a floor to that tank?

10 THE WITNESS: Yes, there was.

11 THE COURT: Okay. And was that metal as
12 well?

13 THE WITNESS: I'm sorry?

14 THE COURT: Was that metal as well?

15 THE WITNESS: Yes, sir.

16 THE COURT: Thank you.

17 Mr. Linsin, any cross-examination?

18 CROSS-EXAMINATION BY MR. LINSIN:

19 Q. Good afternoon, Mr. Rogers.

20 A. Good afternoon.

21 Q. I will introduce myself formally, though we met
22 before. My name is Greg Linsin. I represent
23 Tonawanda Coke.

24 You were asked a number of questions by
25 Mr. Piaggione regarding the -- I'm sorry, regarding

1 the mixing of the decanter tank coal tar sludge and
2 the material from these tanks with the coal on the
3 coal piles, correct?

4 A. Yes.

5 Q. And you were repeatedly asked by Mr. Piaggione
6 whether this process of mixing occurred on the
7 ground, do you recall that?

8 A. Yes.

9 Q. Are you familiar with the coal field itself?

10 A. Yes.

11 Q. And the roadways on which trucks and front end
12 loader operators drive in the coal fields, what
13 does -- what do those roadway consist of?

14 A. Coal.

15 Q. And that's the same throughout the coal field,
16 is that correct?

17 A. Yes.

18 Q. And do you know, based on your years of
19 experience there, how deep that coal is in the coal
20 fields at the Tonawanda Coke facility?

21 A. Anywhere between 3 and 6 feet.

22 Q. And do you know what is beneath that 3 to
23 6 feet of coal upon which the coal piles sit?

24 A. Clay.

25 Q. And do you have any reason to know how deep

1 that clay is?

2 A. I've been down in that clay approximately
3 15 feet below the surface and saw solid clay.

4 Q. All right. Now, all of the mixing that you
5 testified about from the decanter coal tar sludge
6 and the material that was excavated from the tanks,
7 you testified that it was mixed with the coal,
8 correct?

9 A. Yes.

10 Q. And after it was mixed with the coal, that
11 material was charged into the ovens, correct?

12 A. Yes.

13 Q. That was the purpose of mixing it with the coal
14 before it could be charged back into the ovens,
15 correct?

16 A. Yes.

17 Q. When you took or you directed people to take
18 the material from the tanks and mix with the coal,
19 were you telling them to dispose of this material
20 out on the coal field?

21 MR. PIAGGIONE: Objection, your Honor.

22 MR. LINSIN: Or were you telling them to
23 mix the material?

24 THE COURT: All right. What's your
25 ground?

1 MR. PIAGGIONE: The issue of calling for a
2 conclusion from this witness.

3 THE COURT: No, not on those grounds.
4 Overruled.

5 Do you understand the question, Mr. Rogers?

6 THE WITNESS: Yes.

7 THE COURT: All right. You may answer it,
8 please.

9 THE WITNESS: I was asking them to mix it.

10 MR. LINSIN: And when you talked to the
11 front end loader operators -- when you see the tar
12 tank filled up in the by-products area, and you
13 talked to the front end loader operators and asked
14 them to take a load out to the coal fields, were
15 you asking them to dispose of that coal tar sludge,
16 or to mix it on the coal piles?

17 MR. PIAGGIONE: Again, your Honor, the
18 issue of RCRA disposal is a legal conclusion. I
19 object.

20 THE COURT: Overruled. You may answer
21 that question.

22 THE WITNESS: Mix it.

23 BY MR. LINSIN:

24 Q. All right. When -- based on your time at
25 Tonawanda Coke, the mixing of the decanter tank

1 coal tar sludge, was that done in the same way as
2 you've just described from the time you first
3 started at the plant until the search warrant
4 in 2009?

5 A. Yes.

6 Q. Now, you were asked some questions as well
7 about the concrete pad, correct?

8 A. Yes.

9 Q. And I believe you recall that -- you testified
10 that you don't recall exactly when that was
11 installed, correct?

12 A. No.

13 Q. Do you recall though that the concrete pad was
14 constructed there at a time when certain coal tar
15 sludge was actually brought to the Tonawanda Coke
16 facility from off site?

17 A. Yes.

18 Q. And is it accurate that the concrete pad was
19 then -- then served as a staging area or a storage
20 area for this off-site coal tar sludge when it was
21 brought in it by truck?

22 A. Yes.

23 Q. Now, you testified that you've had a
24 recollection of serving as the crane operator when
25 the pressure relief valve was installed on the coke

1 oven gas line. Do you recall that testimony?

2 A. Yes.

3 Q. Now, do you recall a time when the pressure
4 relief valve on that line was actually moved from
5 one location to another on the coke oven gas line?

6 A. I don't know what you're asking.

7 Q. Okay. Do you recall that there was a pressure
8 relief valve on the line that was deactivated, and
9 then a second pressure relief valve was installed a
10 little further downstream on the coke oven gas
11 line?

12 A. Yes.

13 Q. All right. And is that the installation you
14 have a recollection of participating in?

15 A. Yes.

16 Q. All right. So there was a pressure relief
17 valve on that line before, but you assisted in the
18 installation of the new location for that valve, is
19 that correct?

20 A. Yes.

21 THE COURT: And your answer is yes?

22 THE WITNESS: Yes.

23 THE COURT: Thank you.

24 THE WITNESS: Sorry, your Honor.

25 THE COURT: That's okay.

1 MR. LINSIN: The Court's indulgence. Just
2 one moment, please.

3 THE COURT: Certainly.

4 BY MR. LINSIN:

5 Q. So does it fit with your memory, Mr. Rogers,
6 that the scrapping of these old tanks and then the
7 excavation that you talked about occurred in late
8 summer, early fall of 2009, does that fit with your
9 memory?

10 A. Yes.

11 Q. And when you were authorized to do this work,
12 were you told not to do it at a certain time, or
13 were you told to do it at nighttime so people
14 couldn't see it?

15 A. No.

16 Q. Was your objective in excavating this tar to
17 reuse and recycle that tar in the coke ovens?

18 A. Yes.

19 MR. PIAGGIONE: Objection, your Honor.
20 Again recycling is an issue -- is a legal issue for
21 this.

22 THE COURT: No. It was for reuse is the
23 testimony. Overruled. The answer will stand.

24 BY MR. LINSIN:

25 Q. During the time that you were working with

1 Tonawanda Coke, do you recall seeing regulators out
2 at the facility from time to time?

3 A. Yes.

4 Q. Do you recall seeing regulators from the air
5 division of DEC there?

6 A. Yes.

7 Q. Do you recall seeing regulators from the
8 hazardous waste division of DEC from time to time?

9 A. Yes.

10 Q. And did the operations that you've testified
11 about continue in the same manner you've described
12 them when the regulators were there or not there?

13 A. Yes.

14 MR. LINSIN: I have nothing further, your
15 Honor. Thank you.

16 THE COURT: Okay, Mr. Linsin, thank you.

17 Mr. Personius.

18 MR. PERSONIUS: Just a couple, your Honor,
19 please.

20 THE COURT: Okay.

21 MR. PERSONIUS: I just need one quick
22 second please.

23 CROSS-EXAMINATION BY MR. PERSONIUS:

24 Q. Good afternoon, Mr. Rogers.

25 A. Good afternoon.

1 Q. We've met before.

2 A. Yes, we have.

3 Q. And I represent Mark Kamholz. Rod Personius.
4 As your dentist will sometimes say, we're almost
5 done.

6 A. Thank you.

7 Q. Would you put Government Exhibit 3.11 up,
8 Lauren? That's in evidence.

9 Do you remember that Mr. Piaggione asked you
10 about this photograph of the -- it's called the tar
11 box or tar bin?

12 A. Yes.

13 Q. Okay. This is in the by-products area?

14 A. Yes.

15 Q. And this contains the -- the coal tar sludge
16 that's generated as part of Tonawanda Coke's
17 operation?

18 A. Yes.

19 Q. Based on the many, many years you were at
20 Tonawanda Coke, Mr. Rogers, could you explain to
21 the jury how frequently this box would have to be
22 emptied and what factors might affect that, please?

23 A. Depending on production spells out how often
24 this has to be done. There's times when you may go
25 three, four, five days that it doesn't get cleaned.

1 And the wintertime also plays in it, because the
2 tar is thicker. It's not a liquid. It becomes
3 more of a putty, so it would pile up and not need
4 to be cleaned as quickly. So it all depends on
5 different factors.

6 Q. So in addition to the time of year, would the
7 production level --

8 A. Absolutely.

9 Q. -- at the plant, that would affect it?

10 A. Yes, sir.

11 Q. Higher production you're going to have to empty
12 it more often, lower production less often?

13 A. Yes, sir.

14 Q. The production rate at Tonawanda Coke from 2005
15 to 2009 varied?

16 A. Yes.

17 Q. You may take that down, Lauren. Thank you.

18 You were asked about the pressure relief valve
19 in the by-products area?

20 A. Yes.

21 Q. You told the jury that your experience was that
22 would release?

23 A. Yes.

24 Q. Okay. You said it would release with some
25 frequency, correct?

1 A. Yes.

2 Q. All right. Now, in your many years' experience
3 at Tonawanda Coke, did you find that the frequency
4 of those releases by that valve was effected by
5 certain factors?

6 A. Yes.

7 Q. Would you explain to the jury what those
8 factors are, please?

9 A. The adjustment of the set point could change,
10 and production -- again, when production is
11 relatively low, the gas pressure is not as high in
12 the plant, thus the frequency would be less.

13 Q. Did you notice any difference in the frequency
14 of release between summer and winter?

15 A. Not so much.

16 Q. Okay. Lauren, would you please put up
17 Government Exhibit 136.10, which is in evidence?

18 This is the one of the photographs you were
19 shown by Mr. Piaggione on his examination.

20 Do you recall that, Mr. Rogers?

21 A. Yes.

22 Q. And I don't know which tank is which, but this
23 is one of the two tanks you testified about, right?

24 A. Yes.

25 Q. Or actually what's left of it. And I'm going

1 to try this. Do you see where I put the red arrow?

2 A. Yes.

3 Q. Is that inside the tank?

4 A. Yes, it is.

5 Q. And is that -- where that arrow is pointing to,
6 is that this coal tar substance that you're
7 referring to?

8 A. Yes.

9 Q. Did it have a -- it would appear from what we
10 see here it would have a thickness to it?

11 A. Yes.

12 Q. Was it a thick material?

13 A. Very thick.

14 Q. Close to a solid?

15 A. Very.

16 Q. Okay. Would you please, Lauren, put up
17 Government Exhibit 136.11, which is also in
18 evidence.

19 If I recall correctly, this is the other
20 tank --

21 A. Yes.

22 Q. -- that you were asked about. And the arrow
23 happens to still be in the middle of what's left of
24 that tank?

25 A. Yes.

1 Q. And is that the coal tar substance you're
2 referring to?

3 A. Yes.

4 Q. At least the same thickness as you described
5 for the other tank?

6 A. Yes.

7 Q. Okay. You may take that down, Lauren.

8 MR. PERSONIUS: Judge, may I have a
9 minute?

10 THE COURT: Certainly.

11 MR. PERSONIUS: Your Honor, we have no
12 more questions for Mr. Rogers. Thank you, sir.

13 THE COURT: Okay, Mr. Personius, thank
14 you. Mr. Piaggione.

15 MR. PIAGGIONE: Yes, your Honor, just a
16 few questions to -- on redirect to clarify.

17 REDIRECT EXAMINATION BY MR. PIAGGIONE:

18 Q. May we have 136.10 again, please?

19 Mr. Rogers, how many buckets of material from
20 inside that tank did you remove?

21 A. Five to six end loader buckets each time I did
22 it, and I did it approximately ten times all
23 together.

24 Q. Ten times spread out over a period of time?

25 A. A month and a half or so.

1 Q. Okay. And how much is in a bucket?

2 A. It would depend on the thickness of the
3 material. There would be a lot of air space on
4 stuff that was this thick. Half bucket, four to
5 five 55-gallon drums approximately.

6 Q. How much is that in tons?

7 A. Three to five.

8 Q. Three to five tons, so how many buckets did you
9 say you took out?

10 A. Five to six.

11 Q. Every time you did it?

12 A. Yes.

13 Q. So that's 25 tons?

14 A. Around there, yes.

15 Q. Ten times at least?

16 A. Yes.

17 Q. So that's 250 tons?

18 A. Yes.

19 Q. Okay. And that was mixed in the coal fields?

20 A. Yes.

21 Q. Okay. And during 2005-2009, how often was the
22 tar box emptied?

23 A. Periodically. Don't know exactly how many
24 times. Depended on when it needed it.

25 Q. Okay. Did it happen once a day at times?

1 A. At times.

2 Q. All right. Did it happen more than once a day
3 at times?

4 A. Depending on how thick the material, they could
5 have gone into it twice. The size of the machine
6 also.

7 Q. And when they did that, did you know which coal
8 pile they took it to?

9 A. No.

10 MR. PIAGGIONE: Okay. I have no further
11 questions, your Honor.

12 THE COURT: Mr. Linsin, anything?

13 MR. LINSIN: I have nothing further.

14 THE COURT: Mr. Personius?

15 MR. PERSONIUS: Nothing, your Honor.

16 THE COURT: Okay, Mr. Rogers, you're
17 excused. Thank you very much, sir.

18 THE WITNESS: Thank you.

19 THE COURT: Okay. Okay. I don't know,
20 have you worked up an appetite? Why don't we break
21 for lunch, but we'll start at 2:00 o'clock, okay?
22 Thank you very much. Don't discuss the case. Keep
23 your minds open please.

24 (Jury excused from the courtroom.)

25 THE COURT: Okay. We'll see everybody at

1 two.

2 MR. LINSIN: Thank you, your Honor.

3 MR. PERSONIUS: Thank you.

4 THE COURT: Thank you.

5 (Lunch recess was taken.)

6 (Jury seated.)

7 THE COURT: All right. Good afternoon.

8 Please have a seat.

9 All right. Hope you had a good lunch. Glad
10 you're back. We're ready to begin. The attorneys
11 and parties are back present. You, of course,
12 ladies and gentlemen, are here, roll call waived.

13 We are in the government's case. Let's see, by
14 my count we should be at witness number 16. Whose
15 witness? Mr. Piaggione?

16 MR. PIAGGIONE: Yes, your Honor.

17 THE COURT: Okay. If you would call your
18 next witness, please.

19 MR. PIAGGIONE: Yes, thank you, your
20 Honor. We'll call Jason Kambat. K-A-M-B-A-T-T.

21 THE COURT: By whatever name they call
22 you, come on up. If you stop right at the witness
23 area, right there. Turn around and face the jury,
24 I'll have an oath administered to you.

25 J A S O N J O H N K A M B A T, having been duly

1 sworn as a witness, testified as follows:

2 THE COURT: Okay. Be careful when you
3 enter. We're going to ask you to testify and look
4 in the direction of the jury. It sort of helps
5 them watch you, and makes it a little bit easier to
6 follow your testimony.

7 I have a few preliminary instructions.
8 Basically, if you don't understand a question,
9 don't answer it. Just ask the attorneys or me, if
10 I'm asking you the question, to repeat the
11 question.

12 I'm going to ask you to speak in a
13 conversational tone. Speak at the microphone. The
14 microphone is basically friendly. You just have to
15 get maybe a little closer than you are right now
16 and speak at it.

17 Be as succinct with your answers as you can.
18 Don't volunteer information. That's usually what
19 complicates things. If you can answer a question
20 yes or no, assuming it calls for that kind of
21 answer, please try to do that.

22 If there's an objection, wait until I rule on
23 the objection, and then I'll let you know answer
24 the question, wait for another question, or I'll
25 give you some other related-type of instruction,

1 okay?

2 THE WITNESS: Okay.

3 THE COURT: I think you're going to carry
4 okay. If you speak at the microphone, state your
5 full name, spell your last name, please.

6 THE WITNESS: Jason John Kambat. Spelling
7 my last name is K-A-M-B-A-T.

8 THE COURT: You'll have to speak up higher
9 than that or move a little closer to the
10 microphone.

11 All right. Let's try it, Mr. Piaggione. And
12 we're going to ask you to speak into the
13 microphone, please.

14 MR. PIAGGIONE: Yes, your Honor. I think
15 I have my voice back now. I don't think it will be
16 a problem now.

17 THE COURT: Okay. Thank you.

18 DIRECT EXAMINATION BY MR. PIAGGIONE:

19 Q. Mr. Kambat, where are you employed?

20 A. Tonawanda Coke.

21 Q. And how long have you been employed there?

22 A. A little over ten years.

23 Q. So, what year did you start?

24 A. January 7th, 2003.

25 Q. Okay. And what's your current position?

1 A. Supervisor.

2 Q. Okay. And how long have you been -- well, what
3 was your position when you started?

4 A. Laborer.

5 Q. Okay. And as part of your duties, did you work
6 at the wharf?

7 A. Yes.

8 Q. Okay. And what happens on the wharves?

9 A. You pull the series of gates to pull the
10 finished product up on to the belt so it can be
11 loaded in the trucks or railcars.

12 Q. Okay. If you could just slow down a little.
13 Is your work affected by the use of the quench
14 towers?

15 A. Yes.

16 Q. How many quench towers are at Tonawanda Coke?

17 A. Two.

18 Q. Okay. How do you identify them?

19 A. One and two tower.

20 Q. Okay. Is the one tower the western most tower?

21 A. Yes.

22 Q. And two is the east tower?

23 A. Yes.

24 Q. Okay. And how do the quench towers relate to
25 the work on the wharves?

1 A. Could you repeat the question?

2 Q. How are the quench towers, the use of the
3 quench towers, related to the work on the wharves?

4 A. They cool the coke down.

5 Q. Okay. So how many wharves are there?

6 A. Two.

7 Q. Is one closer to the one tower?

8 A. Yes.

9 Q. And one is closer to the two tower?

10 A. Yes.

11 Q. Okay. And so, depending on which wharf they're
12 using -- rather which tower they're using, they
13 would be using a corresponding wharf?

14 MR. LINSIN: Objection leading, your
15 Honor.

16 THE COURT: All right. Yeah, it was a
17 disjointed question. Sustained.

18 BY MR. PIAGGIONE:

19 Q. Okay. So the use of the towers has an effect
20 on the work on the wharf or not?

21 A. Could you repeat that again?

22 Q. The use of the tower, does that have an effect
23 on the work on the wharf or not?

24 MR. LINSIN: Your Honor, I object again.

25 THE COURT: Yeah, sustained.

1 BY MR. PIAGGIONE:

2 Q. All right. While working on the wharves, did
3 you observe how often the quench towers were used?

4 A. Yes.

5 Q. How often?

6 A. Every time they pushed an oven.

7 Q. Okay. Use of which tower -- how often did they
8 use one tower as opposed to the other?

9 A. They alternated.

10 Q. This was in 2003?

11 A. Yes.

12 Q. Okay. Did that use change at all in 2004?

13 A. I'm not sure.

14 Q. Okay. During your time working at Tonawanda
15 Coke, how frequently did they use -- did they use
16 each tower?

17 MR. LINSIN: Objection, foundation.

18 THE COURT: I'm sorry?

19 MR. LINSIN: Lack of foundation, your
20 Honor.

21 THE COURT: Okay. Sustained.

22 BY MR. PIAGGIONE:

23 Q. Okay. During your time working at Tonawanda
24 Coke, have you observed the use of -- the frequency
25 of use of each quench tower?

1 A. Yes.

2 Q. And how often did they use -- while you were
3 working there at Tonawanda Coke, how often did
4 you -- tell us how often they used each tower.

5 THE COURT: Start it begin, please.

6 MR. PIAGGIONE: Sorry.

7 THE COURT: Give us a time frame, if you
8 can.

9 BY MR. PIAGGIONE:

10 Q. Let's go back to between 2005 and 2009, did you
11 observe the frequency of the use of each quench
12 tower?

13 A. Yes.

14 Q. And how frequently did they use each quench
15 tower?

16 A. They alternated.

17 Q. Okay. And was there a time when the west tower
18 was down for repair?

19 A. Yes.

20 Q. Do you know approximately when that was?

21 A. I can't recollect.

22 Q. Okay. Do you recall how long that was?

23 A. I can't say with certainty.

24 Q. Okay. Was it longer than a year?

25 A. I do not believe so.

1 Q. Okay. While working on the wharves, did you
2 observe -- excuse me. After working on the wharfs,
3 what other job did you -- when you stopped working
4 on the wharfs, did you go to another job?

5 A. Yes.

6 Q. What job was that?

7 A. The trestle.

8 Q. Okay. And from the trestle where did you go?

9 A. The yard runner.

10 Q. What is -- when you said working on the
11 trestle, you want to explain what that was?

12 A. We load the finished product into a hopper, and
13 it goes through a screening station to load trucks.

14 Q. Okay. And when you were yard runner, what does
15 that mean?

16 A. You were a truck driver. You drove tractor
17 trailer and dump truck. You would load trailers
18 for our trucking company, Ausmus.

19 Q. Now, while you're driving trucks around
20 Tonawanda Coke, is there any need to note which
21 quench tower's being used?

22 A. Could you repeat that?

23 Q. Okay. When you're driving a truck at Tonawanda
24 Coke on the facility, is there any need to note
25 which quench tower is being used?

1 A. No.

2 Q. Okay. Is it -- have you been instructed when
3 you drive near a quench to --

4 MR. LINSIN: Object, leading, your Honor.
5 The witness gave a very direct answer, and now
6 counsel is simply trying to --

7 THE COURT: I mean, very honestly, the
8 questions haven't been too good, Mr. Piaggione.
9 They're difficult to follow, frankly. Take your
10 time, get the right questions out.

11 But objection sustained.

12 BY MR. PIAGGIONE:

13 Q. Have you ever been caught in the steam of a
14 quench tower while driving one of your vehicles?

15 A. Yes.

16 Q. Okay. As a result of that what happens?

17 A. You stop.

18 Q. Why?

19 A. Safety measures.

20 Q. Okay. So is there a need to note when a steam
21 from a quench is evident while you're driving?

22 A. Yes.

23 Q. Okay. So do you have to note which tower is
24 being used while you're driving?

25 THE COURT: Sustained.

1 BY MR. PIAGGIONE:

2 Q. What happens when you get in -- when you are in
3 your truck and a quench steam hits the truck?

4 A. The windshield gets vapor on it.

5 Q. Okay. What do you mean by vapor? Can you
6 describe it, please?

7 A. It's kind of like being in a steam bath.

8 Q. Is there anything on the windshield at all
9 besides steam?

10 A. Yes.

11 Q. What?

12 A. Little black specks.

13 Q. Okay. What do you do, if anything, to remove
14 the spots from the windshield?

15 A. Turn the windshield wipers on.

16 Q. Did there come a time that you operated an end
17 loader?

18 A. Yes.

19 Q. When was that?

20 A. That was the job that I took -- I bid after I
21 was a yard runner.

22 Q. Okay. Can we get -- how long were you a yard
23 runner?

24 A. Approximately a year and a half.

25 Q. And so what year are we talking about when you

1 became an end loader?

2 A. Roughly 2005.

3 Q. Okay. Was one of your duties to empty the coal
4 tar box?

5 A. Yes.

6 Q. And how often did you empty it?

7 A. Was a regular practice.

8 Q. Okay. Was it daily?

9 A. Yes.

10 Q. Okay. And where did you bring it?

11 A. To the pad in the coal field.

12 Q. Okay. And was this -- which shift were you on
13 when you were doing this?

14 A. I worked 4-to-12s and the midnight shift.

15 Q. Okay. So during the night shift did you ever
16 bring it to the coal piles?

17 A. No.

18 Q. So the only place you brought it was where?

19 A. To the pad.

20 Q. Okay. In the course of your employment did you
21 observe the coal tar bin emptied in the daytime?

22 A. Yes.

23 Q. Can you tell us where it was -- where it went
24 then?

25 A. Coal piles.

1 Q. Okay. Was there any instructions given to you
2 to -- did you ever do it?

3 A. Yes.

4 Q. Okay. And was this after the day -- working
5 the night shift?

6 A. Could you repeat the question?

7 Q. Sorry. After you became a coal -- an end
8 loader at night on the night shift, did your job
9 change? Did your job change after that?

10 Did you take another job after that?

11 A. Yes.

12 Q. What was that?

13 A. Supervisor.

14 Q. Where?

15 A. Coke handling.

16 Q. Okay. As part of that, did you empty the coal
17 tar box?

18 A. No, not as a supervisor.

19 Q. Okay. Did you empty the coal tar box as -- in
20 what position? Besides end loader at night.

21 A. Breeze crusher.

22 Q. As breeze crusher, okay. When did you become
23 the breeze crusher?

24 A. Around the middle of 2004 to 2005.

25 Q. And during that time did you empty the coal tar

1 box in the daytime?

2 A. Yes.

3 Q. Okay. And where did you bring it?

4 A. To the closest coal pile to the pad.

5 Q. Okay. And was there any instructions given to
6 you to mix the coal with the coal tar sludge?

7 A. Yes.

8 Q. Okay. What did you do? Did you mix it with
9 the coal?

10 A. Yes.

11 THE COURT: All right. Hold on. I mean,
12 you gave him two questions. Try to get one
13 question that he can understand, please.

14 MR. PIAGGIONE: Okay. Can you tell us
15 where did you bring the coal tar from the coal tar
16 sludge box?

17 MR. LINSIN: Objection, asked and
18 answered.

19 THE COURT: Sustained.

20 BY MR. PIAGGIONE:

21 Q. When you got to the coal pile with the coal tar
22 sludge from the coal tar box, what did you do, if
23 anything?

24 A. Are you talking about day shift?

25 Q. Day shift, yes.

1 A. We would mix the tar in the pile closest to the
2 pad.

3 Q. Okay. Did you have any instructions given to
4 you to prevent the sludge from being mixed with the
5 coal on the coal tar -- on the coal pile?

6 MR. LINSIN: Objection, your Honor. I
7 simply do not understand that question.

8 MR. PIAGGIONE: Was there instructions
9 given to you --

10 THE COURT: Sustained. Okay. Give us a
11 setting, and then --

12 MR. PIAGGIONE: Okay. All right.

13 BY MR. PIAGGIONE:

14 Q. Mr. Kambat, you testified day shift
15 between 2004 and 2005 you were bringing the coal
16 tar sludge from the coal tar box to the coal piles,
17 is that correct?

18 A. Yes.

19 Q. Okay. Were you given any instructions how to
20 mix the coal tar sludge with the coal?

21 A. No.

22 Q. Okay. Were you given any instructions to
23 prevent it from hitting the ground?

24 A. No.

25 Q. Were you given any instructions to not mix it

1 in the rain?

2 A. No.

3 Q. Did you mix it in the rain?

4 A. Me personally, no.

5 Q. Did you observe it being mixed in the rain?

6 A. Yeah.

7 Q. When did you observe it being mixed in the
8 rain?

9 A. When I worked on the trestle.

10 Q. Okay. When was that?

11 A. 2003.

12 Q. Okay. Now, were there -- when you mixed it --
13 when you mixed it on the coal pile, were there any
14 walls around the piles to prevent the material or
15 the rain from spreading the material out?

16 MR. PERSONIUS: Again, your Honor, I
17 object. He testified he did not mix it in the
18 rain.

19 MR. PIAGGIONE: Excuse me, you're correct.
20 I'll restate the question.

21 BY MR. PIAGGIONE:

22 Q. When you mixed the materials on the coal pile,
23 the coal tar sludge on the coal pile, were there
24 any walls around the pile to prevent the material
25 from spreading out?

1 A. Yes, there was one wall.

2 Q. Okay. Other than that one wall, was there
3 anything else?

4 A. No.

5 Q. Okay. Did there come a time when you request
6 -- the wall was located where?

7 A. Was the wall to the pad on the left-hand side
8 of the pile closest to the pad.

9 Q. Okay. Did there come a time that you
10 requested -- you were requested to mix the tar
11 sludge on the pad with the coal piles?

12 A. Could you repeat the question?

13 Q. Did there come a time that you were requested
14 to mix the tar sludge on the pad with the coal
15 pile?

16 MR. LINSIN: Your Honor, I object. Again,
17 I apologize. I do not understand the question.

18 THE COURT: All right. Sustained.

19 BY MR. PIAGGIONE:

20 Q. Okay. Was there tar sludge on the pad that you
21 had in the coal field?

22 A. Yes.

23 Q. Did there come a time that you were requested
24 to take the coal tar sludge from the pad and mix it
25 with the coal pile?

1 A. Yes.

2 Q. Okay. And approximately when was this?

3 A. 2005.

4 Q. Okay. Was there anything -- did you do that?

5 A. Repeat.

6 Q. Did you do that?

7 A. Yes.

8 Q. Can you describe what you did?

9 A. Went into the pad with the end loader, front
10 end loader, pulled the product that was on the pad
11 out of the pad, brought it to the pile which was
12 designated to me by my supervisor, spread it out.
13 It was run over by the bulldozer, and then we
14 pushed it up into the pile that we had set it in
15 front of.

16 Q. Okay. When you said you spread it out, where
17 did you spread it out?

18 A. In the coal field.

19 Q. Where on the coal field, on the ground?

20 A. Yes.

21 Q. Okay. In front of the coal pile?

22 A. Yes.

23 Q. And then you and your supervisor did what?

24 A. Ran over it with the bulldozer.

25 Q. And then what did you to, if anything?

1 A. Pushed it up into the coal pile that it was
2 closest to.

3 Q. When it was spread out on the ground, was there
4 anything underneath it other than the ground that
5 was in the coal field?

6 A. No.

7 Q. Okay. Was there anything on the sides of the
8 walls to prevent it from spreading out?

9 A. No.

10 Q. Okay. Did you ever get any hazardous waste
11 training?

12 A. No.

13 Q. Okay. Now, when you did this, when you had
14 performed this mixture, was there anything about
15 that incident that stayed in your mind?

16 A. Yes.

17 Q. What was that?

18 A. I broke out in a rash on my arms.

19 Q. Okay. And what did you do about that?

20 A. I asked the human resource and safety personnel
21 director, Ryan King, for an MSDS book.

22 Q. Did you get one?

23 A. No.

24 Q. Were you given any other further explanation?

25 A. No.

1 Q. Okay. Can you say for certainty that rash was
2 caused by anything you had to do with the coal tar
3 sludge?

4 A. No.

5 Q. Okay. Were you ordered to mix more coal tar
6 sludge from the pad with the coal piles?

7 A. Repeat.

8 Q. Were you ordered to mix more coal tar sludge
9 from the pad with the coal piles?

10 A. Yes.

11 Q. Okay. When was that?

12 A. The next day.

13 Q. Okay. And what did you do, if anything?

14 A. Refused.

15 Q. Okay. You worked in the coal piles between --
16 coke field, excuse me, between 2005 and 2009?

17 Have you worked out in the coal fields
18 between 2005 and 2009?

19 A. Yes.

20 Q. Okay. And have you had opportunity to observe
21 mixtures of coal tar sludge with coal on coal piles
22 in the coal field during that period of time?

23 A. Yes.

24 Q. Okay. Can you tell us how long you have
25 observed coal tar sludge and coal mixed in together

1 before it was put into the process for the battery?

2 A. Could you repeat that?

3 Q. Okay. How long would a mixture of coal tar
4 sludge and coal be on the ground before it was put
5 into the process?

6 MR. PERSONIUS: Form. I'm sorry, Judge,
7 form.

8 THE COURT: Objection, form?

9 MR. PERSONIUS: I'm sorry, Judge. I'm so
10 sorry. I'm thinking of a deposition. I object.

11 THE COURT: I know you're trying to move
12 things along, so you cut out half of the statement.
13 But sustained.

14 MR. PIAGGIONE: Sustained?

15 THE COURT: Sustained.

16 BY MR. PIAGGIONE:

17 Q. Okay. Have you had an opportunity to observe
18 the coal tar sludge in the coal in the coal fields
19 between 2005 and 2009?

20 A. Yes.

21 Q. Okay. And have you observed how often the coal
22 tar mix is put back on to belts to go to the
23 battery? Or put on belts to go to the battery?

24 MR. LINSIN: Compound question.

25 MR. PIAGGIONE: Withdrawn. Withdrawn.

1 BY MR. PIAGGIONE:

2 Q. Have you observed the coal tar sludge -- how
3 long -- in making your observations of mixtures of
4 coal tar sludge and coal, how long has -- have you
5 observed that material stay there before it's put
6 into the process?

7 THE COURT: All right. Do you understand
8 the question?

9 THE WITNESS: No.

10 THE COURT: Okay.

11 MR. PIAGGIONE: How long -- how soon after
12 the mixture is placed in the coal pile, the coal
13 tar sludge and the coal, before it is taken and put
14 into the process?

15 THE COURT: I don't really know what
16 you're asking for. Because you mix up the mixture,
17 coal tar sludge. It's confusing. Try it again.

18 MR. PIAGGIONE: Okay. The coal tar and
19 the coal, when they're mixed together, how long
20 does it take before it gets removed and put back
21 into the ovens?

22 THE COURT: Are you talking about now or
23 when?

24 MR. PIAGGIONE: Originally we prefaced
25 this between 2005 and 2009, your Honor.

1 THE COURT: Okay. So, how long did it
2 take back then?

3 MR. PIAGGIONE: Yes.

4 THE COURT: Not how long does it take now,
5 so there's the distinction you're drawing, right?
6 Okay. That's what was confusing, Mr. Piaggione,
7 because I didn't know --

8 MR. PIAGGIONE: I apologize, your Honor.
9 That's my own fault.

10 Back in 2005-2009, did you -- how long did it
11 take for coal tar sludge and coal to be put back
12 through the process -- be brought to the ovens?

13 THE COURT: What did you just say? Again
14 you trail off. You know, it's in part my hearing
15 probably, but I don't catch those little add-ons
16 that you --

17 MR. PIAGGIONE: I apologize.

18 THE COURT: Okay. Give us a full
19 question, no add-ons. No explanations during the
20 question, okay? Please.

21 MR. PIAGGIONE: Thank you, your Honor.

22 BY MR. PIAGGIONE:

23 Q. With the mixture of coal and coal tar sludge,
24 you made observations of it after it was mixed?

25 A. Yes.

1 Q. Okay. How long does it take to bring that coal
2 tar sludge mixture to the battery?

3 MR. LINSIN: Objection, time frame.

4 THE COURT: Yeah. And you're using the
5 current, "how long does it take". Is that what you
6 want to the witness to answer when you're
7 talking --

8 MR. PIAGGIONE: You're right, your Honor.
9 I apologize --

10 THE COURT: Wait. Give me a chance
11 because, you know, we're not trying to cut you off
12 Mr. Piaggione, but the questions have to be clear
13 to the witness and the jury and everybody else in
14 order for it to work. So just take your time. I'd
15 rather have you take your time than go through all
16 of this back and forth.

17 MR. PIAGGIONE: Thank you, your Honor.

18 In 2005-2009 how long did it take to bring the
19 coal tar sludge mixture to the battery?

20 THE COURT: Can you answer that?

21 THE WITNESS: I can't answer -- I can't
22 answer that.

23 MR. PIAGGIONE: All right. Did you make
24 observations as to how long the coal tar sludge
25 mixture stayed in the coal piles between 2005

1 and 2009?

2 MR. LINSIN: Objection, asked and
3 answered.

4 Your Honor, if I understand the question, the
5 witness just said he can't answer that.

6 MR. PIAGGIONE: Excuse me, your Honor.

7 THE COURT: I don't know. Can you answer
8 that question? This is confusing, I understand.

9 Here's the problem, you did add an element
10 there. You went from the pile to a place, so it
11 gave it some more definition.

12 THE WITNESS: I can answer that.

13 THE COURT: Well, we're not going to have
14 you answer it until he asks you another question,
15 okay? All right. So just hang in there. It takes
16 a while to get a rhythm, so bear with us.

17 MR. PIAGGIONE: How long did you see the
18 coal tar sludge and coal mixture stay on the coal
19 piles before being removed?

20 MR. LINSIN: Objection.

21 THE COURT: Sustained.

22 MR. PIAGGIONE: How long have you seen the
23 coal tar coal pile -- how long have you seen the
24 coal tar sludge mixture with the coal stay in the
25 coal field?

1 MR. LINSIN: Objection.

2 THE COURT: Sustained.

3 BY MR. PIAGGIONE:

4 Q. What happened to the coal tar sludge and coal
5 after you mixed it?

6 A. It got put into the hopper and run up into coal
7 handling.

8 Q. How long have you seen it stay on -- in the
9 coal field before it was put in the hopper?

10 MR. LINSIN: Objection, time frame.

11 THE COURT: Sustained.

12 BY MR. PIAGGIONE:

13 Q. How long in 2005-2009 did you see it on the
14 ground before it was put in the hopper?

15 A. Till the next day.

16 Q. Okay. Have you ever seen it stay longer?

17 A. Yes.

18 Q. How long have you seen it stay?

19 A. Till the pile was gone.

20 Q. And how long would that take?

21 A. I'd be guessing.

22 Q. Okay. Have you ever seen it stay there for a
23 month?

24 MR. LINSIN: Objection, leading.

25 THE COURT: Sustained.

1 MR. PERSONIUS: And asked and answered.

2 MR. PIAGGIONE: Before being placed in the
3 hopper, how -- what was the longest you've seen
4 that mixture stay on the ground between 2005
5 and 2009?

6 MR. LINSIN: Objection. The witness has
7 responded he would only be guessing, and the
8 question is now being posed again.

9 MR. PIAGGIONE: I didn't ask that
10 question, your Honor. I asked how long. I didn't
11 ask --

12 THE COURT: Well, I'm going to sustain the
13 objection, and I'll let you try again.

14 MR. PIAGGIONE: All right. How is this
15 material removed and placed in the hopper?

16 MR. LINSIN: Your Honor, I'm not sure what
17 material we're talking about now.

18 MR. PIAGGIONE: Okay.

19 THE COURT: I'm not either, so that's an
20 objection. Form of the question, sustained.

21 BY MR. PIAGGIONE:

22 Q. The coal tar mixture back in 2005 and 2009,
23 between that period of time, how was that removed
24 and placed in the hopper?

25 A. With an end loader.

1 Q. Okay. Did the end loader, when it did that,
2 take all the coal tar sludge that had been mixed
3 with the coal?

4 MR. LINSIN: Objection, time frame.

5 THE COURT: Form of the question.

6 MR. LINSIN: And form of the question,
7 yes.

8 THE COURT: Sustained.

9 MR. PIAGGIONE: When you made that
10 observation back in 2005 -- between 2005 and 2009,
11 did the end loader remove all the coal tar sludge
12 and coal when it attempted to remove -- move that
13 pile to the hopper?

14 MR. LINSIN: Objection, form of the
15 question.

16 THE COURT: Sustained.

17 MR. PIAGGIONE: When the material was
18 taken by the end loader --

19 THE COURT: Well, you know you're going to
20 get an objection just the way you started.

21 MR. PIAGGIONE: When the coal tar sludge
22 and coal, between 2005 and 2009, when it was
23 removed, how long -- when it was -- when the end
24 loader removed the coal tar and coal to the
25 hopper --

1 THE COURT: Okay. Hold on. Let's take
2 five minutes.

3 MR. PIAGGIONE: Okay. Thank you.

4 THE COURT: Okay. Want to get up, go out
5 take five, come back.

6 (Jury excused from the courtroom.)

7 THE COURT: If you want to step out and
8 we'll call you when we're ready.

9 (Witness left the courtroom.)

10 THE COURT: Take time to get organized.
11 When you're ready, let us know.

12 MR. MANGO: Absolutely.

13 THE COURT: Thank you.

14 (Short recess was taken.)

15 (Jury not present in the courtroom.)

16 THE COURT: Okay. Do we have any
17 preliminary matters?

18 MR. PERSONIUS: I do, Judge.

19 THE COURT: Yes.

20 MR. PERSONIUS: The defense understands
21 how difficult this has been, but we have an
22 obligation to represent our client.

23 THE COURT: One second. Okay.

24 MR. PERSONIUS: The request is this,
25 Judge. This witness was asked a question which got

1 into the fact he had a rash.

2 THE COURT: Yes.

3 MR. PERSONIUS: The witness then testified
4 in further questioning that he couldn't say the
5 rash had anything to do with his work at Tonawanda
6 Coke. Bringing out the fact this witness suffered
7 some type of rash, given the facts we're working
8 with here, our application is that the jury be
9 instructed that question and answer is stricken,
10 and they're not to consider it. It just shouldn't
11 -- it shouldn't have been asked.

12 THE COURT: Okay. I'll consider that. I
13 think that's appropriate.

14 MR. PERSONIUS: Thank you, Judge.

15 THE COURT: Okay.

16 MR. PIAGGIONE: Could I be heard on that,
17 your Honor?

18 THE COURT: I'm sorry?

19 MR. PIAGGIONE: Could I be heard on that,
20 your Honor?

21 THE COURT: No. I think that's fair given
22 the questions and answers relating to that
23 condition, so --

24 Is there anything else, Mr. Piaggione?

25 MR. PIAGGIONE: No, your Honor. I

1 believe --

2 THE COURT: Do me favor, take your hands
3 out of your pocket.

4 MR. PIAGGIONE: Sorry.

5 THE COURT: I only say that for your
6 benefit, because it doesn't look good in front of
7 the jury, and it's -- it's really a little bit
8 unprofessional, in my judgment.

9 MR. PIAGGIONE: I ask for your -- I
10 apologize, your Honor.

11 THE COURT: Okay. Are you more
12 comfortable? Because sometimes it just takes a
13 while.

14 MR. PIAGGIONE: I believe I'm okay, your
15 Honor.

16 THE COURT: Okay. Well, you know what's
17 going on. I was just going to say don't interrupt
18 yourself in the questioning.

19 MR. PIAGGIONE: All right.

20 THE COURT: That's a good part of the
21 problem, and just keep focused in the here and now
22 versus a time period, and I think we'll get through
23 it.

24 MR. PIAGGIONE: Yes. I see the witness
25 struggling, and I'm trying to help him.

1 THE COURT: Well, what you do is you cut
2 yourself off. You start a question and then you
3 interject and you backtrack and you change
4 terminology, and then it's no good, frankly. And I
5 think your mind is working ahead of what you're
6 speaking, and you never give a chance to -- a train
7 of focus to complete, and that's problematic.

8 So, I will continue to entertain objections and
9 I will rule appropriately if the questions just
10 don't work out. But take your time. I'll give you
11 whatever time you need.

12 MR. PIAGGIONE: Okay, your Honor.

13 THE COURT: Anything else?

14 MR. PIAGGIONE: No, and I appreciate it,
15 your Honor.

16 MR. PERSONIUS: Thank you, Judge.

17 THE COURT: Mr. Kambat, please, if
18 you want to come back up.

19 (Jury seated.)

20 THE COURT: How is our jury doing, okay?
21 Welcome back. Please have a seat.

22 Okay. We're all resumed. The attorneys and
23 parties are back, present. Our jury is here, roll
24 call waived.

25 Our witness is Jason Kambat, and he identified

1 himself as a supervisor I think with Tonawanda Coke
2 Corporation when he started his testimony. He's
3 being examined by Mr. Rocky Piaggione.

4 And, Mr. Piaggione, you can resume direct
5 examination, please.

6 MR. PIAGGIONE: Thank you, your Honor.

7 THE COURT: You're welcome.

8 BY MR. PIAGGIONE:

9 Q. After having a break -- now I don't want you to
10 guess. Between 2005 and 2009 what is the longest
11 that you have observed the coal tar sludge mixture
12 remain in the coal field?

13 A. Thirty days.

14 Q. Okay. With respect to when you took the coal
15 tar sludge from the coal tar box while working on
16 the night shift in 2005, how would you unload that
17 material into the pad?

18 MR. LINSIN: Objection, form of the
19 question.

20 THE COURT: Sustained.

21 BY MR. PIAGGIONE:

22 Q. You testified that you brought the coal tar
23 from the coal tar box to the pad. How -- can you
24 describe how that was done?

25 A. You'd use the end loader to -- use the end

1 loader bucket to go into the tar box, scoop the tar
2 out of the coal tar box, curl your bucket back,
3 back up out of the tar box, and take the coal tar
4 to the pad which is located in the coal field.

5 Q. Okay. And after you deposited the material
6 from the end loader on to the pad, would all the
7 material -- would there be any material left on the
8 end loader bucket?

9 MR. LINSIN: Objection, form of the
10 question.

11 THE COURT: Sustained.

12 All right. You know what you did there, you
13 put "materials" in there, and that confused the
14 question, among other things.

15 MR. PIAGGIONE: Okay. Sorry, your Honor.

16 BY MR. PIAGGIONE:

17 Q. When you took the coal tar sludge to the coal
18 tar pad, you indicated that you put it on the -- on
19 the pad, is that correct?

20 A. Yes.

21 Q. Okay. When you did that, did that remove all
22 the material from your bucket?

23 A. No.

24 Q. Okay. What did you do, if anything, to remove
25 the remains of that coal tar sludge?

1 A. You would push up into the coal pile to clean
2 your bucket.

3 Q. Okay. And the coal tar mixture would remain in
4 the coal pile? After you were --

5 MR. LINSIN: Objection, leading.

6 MR. PIAGGIONE: Would that remove -- by
7 putting it into the coal --

8 THE COURT: Let me rule on it first.

9 MR. PIAGGIONE: I'm sorry.

10 THE COURT: I'll sustain the objection.

11 Let me rule, and then take your time and
12 reformulate.

13 BY MR. PIAGGIONE:

14 Q. It's only one more question. When you put the
15 end loader into the coal pile after -- after
16 depositing the coal tar sludge on the pad, what
17 would happen to the coal tar sludge that was on
18 your end loader?

19 A. Could you repeat the question?

20 Q. After you -- you said you would clean your end
21 loader by putting the coal tar -- by putting --

22 THE COURT: All right. Let's start all
23 over again. You're leading, and there's going to
24 be two objections very shortly. That's okay. Just
25 take your time. Just get it done.

1 MR. PIAGGIONE: How did you clean the
2 end -- the bucket from your end loader after you
3 deposited the coal tar sludge on the pad?

4 MR. LINSIN: Objection, asked and
5 answered.

6 THE COURT: Well, I'm going to allow it
7 and we'll move forward. Can you answer that
8 question?

9 THE WITNESS: When you got to the pad, you
10 would dip your bucket into the pad, let everything
11 drip out of your bucket. What was remaining you
12 would take your end loader and take your bucket
13 into the pile that was closest to the pad to clean
14 your bucket.

15 MR. PIAGGIONE: Okay. And what would
16 happen to the remains that was on your bucket? Did
17 it stay on the coal pile?

18 MR. LINSIN: Objection, foundation.

19 THE COURT: Do you know what he's
20 referring to?

21 THE WITNESS: Yes.

22 THE COURT: You do. Can you answer that
23 question? You want it repeated?

24 THE WITNESS: Yes.

25 THE COURT: Okay. Let's try repeating the

1 question, please.

2 BY MR. PIAGGIONE:

3 Q. When you put your bucket into the coal pile to
4 clean it, what happened to the remains of the coal
5 tar sludge?

6 A. Was left in the pile.

7 MR. PIAGGIONE: Okay. No further
8 questions, your Honor.

9 THE COURT: Okay, Mr. Piaggione, thank
10 you. Mr. Linsin.

11 MR. LINSIN: Thank you, your Honor.

12 CROSS-EXAMINATION BY MR. LINSIN:

13 Q. Good afternoon, Mr. Kambat.

14 A. Good afternoon.

15 Q. My name is Greg Linsin. I represent the
16 Tonawanda Coke Corporation. Let's start out by
17 going back to when you first became employed at
18 Tonawanda Coke, okay?

19 When did you first say you became employed
20 there?

21 A. January 7th, 2003.

22 Q. And what was your first job as of January
23 of 2003?

24 A. Laborer.

25 Q. And as a laborer, what type of work did you do?

1 A. A lot of shoveling.

2 Q. And in what departments of the company did you
3 do this work?

4 A. Coal handling and coke handling.

5 Q. And how long did you work as a laborer?

6 A. Roughly six months.

7 Q. So that about July 2003 you took a different
8 position?

9 A. Was a little bit before that.

10 Q. All right. June 2003?

11 A. I think it was -- I think it was in May.

12 Q. All right. May 2003. What was your next
13 position?

14 A. The trestle.

15 Q. And would you describe please what that is?
16 What work you did and where you did it.

17 A. It's running the locomotive and being the
18 conductor offloading the finished product of
19 railcars, transporting coal cars, moving product
20 around the plant.

21 Q. All right. So when you refer to a trestle,
22 what are you talking about?

23 A. The trestle is where the old truck station is.
24 It would be on the east end of the coal handling
25 building. And that's where the hopper is for

1 offloading the finished product, which is coke.

2 Q. The coke, is that correct?

3 A. Yes.

4 MR. LINSIN: May I have just a moment to
5 retrieve an exhibit, your Honor?

6 THE COURT: Certainly.

7 MR. LINSIN: May I approach the witness,
8 your Honor?

9 THE COURT: Yes.

10 BY MR. LINSIN:

11 Q. Mr. Kambat, I'm going to show you a physical
12 exhibit that has been marked as Defendants' Exhibit
13 LLLL.

14 A. Okay.

15 Q. Can you identify what that is?

16 A. Four-by-nine foundry coke.

17 Q. And is that the primary product of the
18 Tonawanda Coke Corporation?

19 A. Yes.

20 MR. LINSIN: Your Honor, we move, as a
21 demonstrative exhibit, Defendant's Exhibit LLLL
22 into evidence.

23 MR. PIAGGIONE: No objection, your Honor.

24 THE COURT: Okay. Mr. Personius, no
25 objection?

1 MR. PERSONIUS: No objection. Thank you,
2 Judge.

3 THE COURT: Okay. LLLL received, no
4 objection.

5 (Defendants' Exhibit LLLL was received
6 into evidence.)

7 MR. LINSIN: May I publish it to the jury,
8 your Honor?

9 THE COURT: Sure.

10 BY MR. LINSIN:

11 Q. Now, in your work as -- when you said "running
12 the trestle", you would move and transport finished
13 coke product that had been produced from the ovens,
14 is that correct?

15 A. Yes, sir.

16 Q. And the locomotive you're referring to in this
17 work, that was not the hot car, correct?

18 A. Correct.

19 Q. So it's a different locomotive on the plant,
20 right?

21 A. Correct.

22 Q. Now, how long did you run the trestle? You
23 said you started that in May of 2003. How long did
24 you do that?

25 A. Roughly 30 days.

1 Q. All right. And after that did you have another
2 job?

3 A. Yes, I became a yard runner.

4 Q. I'm sorry?

5 A. A yard runner.

6 Q. A yard runner. And is that the truck driving
7 operation you were describing?

8 A. Correct.

9 Q. All right. This would be around June of
10 '03 you started driving the truck?

11 A. Correct.

12 Q. And what were you driving the truck for?
13 What -- what purpose were you driving a truck
14 around the plant?

15 A. Either transporting product or loading the
16 trailers for Ausmus.

17 Q. And Ausmus is a trucking concern, is that
18 right?

19 A. It's a trucking company, yes.

20 Q. And what type of truck were you driving?

21 A. Tractor trailer.

22 Q. And how long did you drive one of those tractor
23 trailers?

24 A. About a year and a half.

25 Q. All right. So in to the end of 2004, is that

1 correct?

2 A. Approximately.

3 Q. All right. And after that, did you have a
4 different job?

5 A. Yes.

6 Q. What was your next job after a truck driver?

7 A. Four-to-12 end loader operator.

8 Q. And now the jury's heard testimony that these
9 front end loaders moved the coal tar sludge, but
10 they had other functions at the plant, didn't they?

11 A. Yes.

12 Q. What other kinds of things did a front end
13 loader operator use that equipment for?

14 A. Cutting roads, cleaning track, transporting
15 track, helping the track gang lay track, tearing
16 out track, rescreening the finished product that
17 was laid out for us to put back through the system.

18 Q. Would they be involved in moving the coal
19 itself?

20 A. Yes.

21 Q. All right. Moving the coal from the coal piles
22 to the hopper, right?

23 A. Yes.

24 Q. And then moving the finished product to the
25 loading area, is that correct?

1 A. Yes. Also pushing up what coal was brought in
2 or dumped.

3 Q. All right. And how long did you work as a
4 front end loader operator?

5 A. Four-to-12 end loader operator roughly 30 days.

6 Q. All right. So we're into early 2005, is that
7 right?

8 A. Yes.

9 Q. What was your next job?

10 A. Breeze crusher operator.

11 Q. How long did you do that job?

12 A. Until I became a supervisor.

13 THE COURT: That's coke breeze, is that
14 what you're referring to?

15 THE WITNESS: Yes.

16 BY MR. LINSIN:

17 Q. Would you describe what a -- first of all,
18 describe what coke breeze itself is.

19 A. When the coke is run up from the wharfs on to
20 the belting system, it goes through a series of
21 shakers. From them shakers we get what they call
22 raw breeze. The raw breeze is transported to the
23 other side of the trestle via K belt.

24 Q. So the breeze is little particles of the coke
25 after -- after it comes out of the oven, is that

1 correct?

2 A. Correct.

3 Q. And that -- those small particles, the breeze,
4 the raw breeze, is then taken and processed by the
5 company, right?

6 A. Correct.

7 Q. And it's processed through a crusher, correct?

8 A. Correct.

9 Q. And when you said you were breeze crusher
10 operator, that's what you were talking about,
11 right?

12 A. Yes, as well as you have to run the end loader.

13 Q. And the finished breeze, the processed breeze
14 is then mixed back in with the coal before it is
15 charged back into the ovens, correct?

16 A. Correct.

17 Q. All right. And how long did you work as a
18 breeze crusher operator?

19 A. Until --

20 Q. Until you became a supervisor. I'm sorry, I
21 asked that one. You became a supervisor, I'm
22 sorry, in 2006, is that right?

23 A. It was 2006, 2007. I'm not a hundred percent.

24 Q. And what are you a supervisor of? What do you
25 supervise?

1 A. Now?

2 Q. Yes, sir.

3 A. Coal handling.

4 Q. Well, in -- is that where you started out as a
5 supervisor?

6 A. No.

7 Q. What did you start out as a supervisor?

8 A. Coke handling.

9 Q. All right. And you oversaw the workers in the
10 coke handling department, is that correct?

11 A. Correct.

12 Q. All right. And then you moved -- was it next
13 to coal handling, or was there some intervening job
14 as a supervisor?

15 A. I went to coal handling from coke handling.

16 Q. Okay. All right. Now, we've run through this
17 list and as I had it down, I don't recall your
18 testifying now about having worked on the wharf.
19 When did that occur? When did you work on the
20 wharf?

21 A. When I was a laborer within the first four
22 weeks of being at Tonawanda Coke.

23 Q. So the observations you made and testified to
24 on direct examination during the time you were on
25 the wharf were from a period back in 2003, is that

1 correct?

2 A. Yes.

3 Q. I see. All right. Now, each of these jobs
4 you've described has its own responsibilities and
5 requirements for you to perform that job, right?

6 A. Correct.

7 Q. And many of these positions involve the
8 operation of heavy equipment, correct?

9 A. Correct.

10 Q. Navigating them throughout the industrial
11 plant, correct?

12 A. Correct.

13 Q. So it's accurate to say, isn't it, that in
14 order to do the jobs you've just described, your
15 attention had to be focused on the responsibilities
16 that you had in each of those jobs at each of those
17 steps in your career at Tonawanda Coke, right?

18 A. Correct.

19 Q. Nobody asked you as a condition of your
20 employment when you came in to calculate the
21 percentage of usage of the two quench towers at
22 this facility, did they?

23 A. No.

24 Q. And as a matter of fact, you'd been interviewed
25 several times by the government officials before

1 coming in here to testify, correct?

2 A. Correct.

3 Q. And nobody asked you before today what that
4 percentage was, isn't that correct?

5 A. Correct.

6 Q. Your testimony is that -- if I heard you
7 correctly, that you recall that there was work
8 being done on each of these quench towers during
9 the 2005 to 2009 time period, correct?

10 A. Correct.

11 Q. And some of that work involved the replacement
12 of tracks for the -- that the quench car ran on,
13 correct?

14 A. Correct.

15 Q. Some of it involved the replacement of nozzles
16 inside the quench towers, correct?

17 A. Correct.

18 Q. And some of it also involved the construction
19 of a moat for a sump in one of the quench towers,
20 correct?

21 A. Correct.

22 Q. Now, do you know, Mr. Kambat, what I -- what --

23 MR. LINSIN: Excuse me, your Honor, may
24 have just one moment please?

25 THE COURT: Sure.

1 BY MR. LINSIN:

2 Q. Do you know what I mean when I refer to the
3 term "a passthrough system" for the quench water?

4 A. No.

5 Q. Do you know whether one of the two quench
6 towers at the facility was -- during the 2005-2009
7 time period was changed from a passthrough system,
8 where the quench water was used only once, to a
9 recycling system, does that refresh your memory at
10 all?

11 A. No.

12 Q. The purpose of mixing the coal tar sludge with
13 the coal on the coal piles was so that that mixture
14 could then be recharged back into the ovens,
15 correct?

16 A. Correct.

17 Q. And that's what you understood when you went
18 out there to perform that mixing process, correct?

19 A. Correct.

20 Q. You were asked a number of questions by
21 Mr. Piaggione about whether the coal piles were on
22 the ground, do you recall those questions?

23 A. Yes, sir.

24 Q. Now, you're familiar with the coal field out at
25 Tonawanda Coke, right?

1 A. Yes, sir.

2 Q. The roadways in that coal field that the front
3 end loaders drive on, that the coal trucks drive
4 on, those roadways are actually composed of coal,
5 correct?

6 A. Correct.

7 Q. And have you ever had the occasion to determine
8 how deep that coal is throughout the coal field at
9 the plant?

10 A. No.

11 Q. Have you ever seen anyone excavate any area or
12 grade the coal field itself?

13 A. Yes.

14 Q. So that you would agree that there is a buildup
15 of coal throughout that coal field, is that
16 correct?

17 A. Correct.

18 Q. Because coal has been placed on that coal field
19 since this facility first started in operation?

20 MR. PIAGGIONE: Objection, your Honor.

21 It's already now interjecting testimony -- facts
22 into the question that have not been discussed at
23 all.

24 THE COURT: Well, if you reput the
25 question, please.

1 MR. LINSIN: I will repeat the question,
2 your Honor.

3 BY MR. LINSIN:

4 Q. When coal is brought to the Tonawanda Coke
5 facility, where is it dumped? Raw coal.

6 A. In the coal field.

7 Q. And has that raw coal been dumped in that coal
8 field on a daily basis since the time you started
9 working there?

10	A. Yes.
----	---------

11 Q. You were asked a number of questions on direct
12 examination regarding the length of time that this
13 mixture of coal tar sludge and coal might remain on
14 one of the piles in the coal field. Do you recall
15 that series of questions?

16 || A. Yes.

17 Q. Is it accurate to say, Mr. Kambat, the vast
18 majority of time that you observed this process,
19 the mixture of coal tar sludge and coal was taken
20 to the hopper to be transported up to the coal
21 handling building within 24 hours of the mixing?

22 || A. Correct.

23 MR. LINSIN: I have nothing further, your
24 Honor. Thank you.

25 THE COURT: Okay, Mr. Linsin, thank you.

1 Mr. Personius, anything?

2 MR. PERSONIUS: Thank you, no, your Honor.

3 THE COURT: All right. Any redirect?

4 MR. PIAGGIONE: Yes, your Honor.

5 REDIRECT EXAMINATION BY MR. PIAGGIONE:

6 Q. Mr. Kambat, is it fair to say that when you
7 worked as a supervisor in the coal field, you had
8 an opportunity to observe the quench towers?

9 A. Could you repeat the question?

10 Q. Is it fair to say that when you worked as a
11 supervisor in the coal fields, you had an
12 opportunity to observe the quench towers?

13 A. Correct.

14 Q. Okay. And how can you tell when a quench tower
15 was in use?

16 A. The steam coming out of the top.

17 Q. Okay. And how frequently did you observe the
18 use of each quench tower based upon those
19 observations?

20 A. They would normally alternate.

21 Q. Okay. And is it fair to say that by
22 alternating, the use was 50 percent each?

23 A. Correct.

24 MR. PIAGGIONE: Okay. No further
25 questions, your Honor.

1 THE COURT: Anything?

2 MR. LINSIN: Just quickly, your Honor.

3 THE COURT: Okay, Mr. Linsin, go ahead,
4 please.

5 RECROSS-EXAMINATION BY MR. LINSIN:

6 Q. Did you keep any record of how often which
7 tower was used?

8 A. No.

9 Q. Isn't it accurate that you recall that quench
10 tower number 1, the west quench tower, the taller
11 one, was out of service for a significant period of
12 time during the 2005-2009 time frame?

13 A. Would you repeat the question?

14 Q. Isn't it true that quench tower number 1, the
15 west quench tower, was out of service entirely for
16 a significant period of time during the 2005-2009
17 time period?

18 A. That is correct.

19 Q. And you testified on direct that it may have
20 been up to a year, is that correct?

21 A. Correct.

22 Q. And it may have been longer, correct?

23 A. Correct.

24 Q. Do you know what year it was out of service?

25 A. No, sir.

1 Q. It could have been 2005, correct?

2 A. Correct.

3 Q. It could have been 2006, correct?

4 A. Correct.

5 Q. It could have been 2007, correct?

6 A. Correct.

7 Q. It could have been 2008, correct?

8 A. Correct.

9 Q. And 2009, correct?

10 A. I don't believe it was 2009.

11 Q. All right.

12 MR. LINSIN: I have nothing further, your
13 Honor. Thank you.

14 THE COURT: Thank you.

15 Mr. Personius?

16 MR. PERSONIUS: Sorry, Judge. May I?

17 THE COURT: Mr. Personius, sure. Go
18 ahead, please.

19 RE-CROSS-EXAMINATION BY MR. PERSONIUS:

20 Q. Good afternoon, Mr. Kambat.

21 A. Good afternoon.

22 Q. We haven't met. I'm Rod Personius, and I
23 represent Mark Kamholz. What I was discussing with
24 Mark, the one question I wanted to ask you, was
25 there a period of time while still working for

1 Tonawanda Coke that you were assigned over at
2 Bethlehem Steel?

3 A. Yes, sir.

4 Q. When was that?

5 A. I'm still currently in charge of that
6 operation.

7 Q. Over at Bethlehem?

8 A. Yes.

9 Q. Okay. Are you there on a full-time basis now?

10 A. I'm the guy that answers for that, yes. Plus
11 I'm running -- helping out in coal handling too.
12 I'm a supervisor there.

13 Q. "There" meaning?

14 A. At Tonawanda Coke in the coal handling.

15 Q. You're at both places?

16 A. Yes, sir.

17 Q. For what period of time have you been assigned
18 at least in part over in -- at Bethlehem Steel?

19 A. Roughly two years and a month.

20 Q. So it would go back to 2011?

21 A. Yes, sir.

22 Q. Okay. That's when that started?

23 A. Yes, sir. I think -- I believe it was
24 March 8th of 2011.

25 Q. And when you provide this testimony about your

1 observation of the use of the quench towers when
2 you were out in the coal field as a supervisor --
3 you understand what I'm talking about?

4 A. Yes.

5 Q. Okay. You don't mean to suggest to us that you
6 would keep absolute track of which quench tower's
7 being used, do you?

8 A. No, I do not keep track.

9 Q. You had a lot of other things to do, right?

10 A. Yes.

11 Q. And when you tell us that it was 50/50, or they
12 alternated, that's just your sense based on when
13 you would notice?

14 A. Yes.

15 Q. Okay. And that would just be occasional,
16 because you had all these other jobs to do, is that
17 fair?

18 A. Correct.

19 MR. PERSONIUS: I have nothing further,
20 Judge.

21 THE COURT: Thank you. Mr. Piaggione.

22 FURTHER REDIRECT EXAMINATION BY MR. PIAGGIONE:

23 Q. Thank you. You just testified about the
24 out-of-service of one of the quench towers, your
25 observations. Did you observe that the number 2

1 quench tower, or the east tower, was also out of
2 service between 2005 and 2009?

3 A. Yes.

4 Q. Okay. And do you recall the dates when number
5 2 was out of service?

6 A. No.

7 Q. When number 2 was out of service, would they
8 use number 1, do you remember, exclusively?

9 A. Yes.

10 Q. Do you recall if it was out of service in 2005?

11 A. No.

12 Q. Do you recall if it was in 2006?

13 A. No.

14 Q. Do you recall if it was in 2007?

15 A. Yes, in 2007 they replaced the tracks.

16 Q. Okay. And while they replaced the tracks,
17 quench tower number 1 was used exclusively?

18 A. Correct.

19 Q. And how long of a period was that?

20 A. I can't answer that.

21 Q. Was it longer than a week?

22 A. No.

23 Q. Okay. Was -- was the number 2 quench tower out
24 in 2008? Can you say when it was out in 2008?

25 A. No.

1 Q. 2009?

2 A. No.

3 Q. Okay. And do you recall -- excuse me. Do you
4 recall --

5 A. Judge, excuse me one second. I'm not sure on
6 the years. They're asking me to back track years,
7 and I'm not a hundred percent if 2009 was -- if it
8 was or wasn't out of service.

9 THE COURT: Okay. Let's --

10 THE WITNESS: The years are blending.

11 THE COURT: Okay. So the years are
12 blending as far as 2008, 2009 is concerned. You're
13 not --

14 THE WITNESS: It's kind of foggy.

15 THE COURT: Okay. With that as the
16 background, you may continue. Thank you.

17 BY MR. PIAGGIONE:

18 Q. With respect to -- you indicated, I believe,
19 your memory as to quench tower number 1 when it was
20 out of service, do you know -- did you indicate it
21 was over a year?

22 A. Yes, it was a long period of time. I believe
23 it was over a year.

24 Q. Okay. And do you recall when the baffles were
25 put back in the east quench tower?

1 A. I don't know the exact date.

2 Q. Okay. Do you remember what month it was?

3 A. I know it was cold.

4 Q. It was cold. And what year was it?

5 A. 2009, 2010.

6 MR. PIAGGIONE: Okay. No further
7 questions, your Honor.

8 THE COURT: Okay, Mr. Piaggione, thank
9 you.

10 Anything, Mr. Linsin?

11 MR. LINSIN: No, thank you, your Honor.

12 THE COURT: Mr. Personius?

13 MR. PERSONIUS: No, your Honor, not for
14 the witness. Just the application we made.

15 THE COURT: Oh, thank you.

16 MR. PERSONIUS: Please.

17 THE COURT: Yes. There was, ladies and
18 gentlemen, some testimony by Mr. Kambat that he had
19 a rash that developed I think early on in his
20 employment. That's struck from the record. That's
21 not anything for you to consider. You may have
22 heard that, but if you recall, the follow-up
23 testimony is he doesn't know what to attribute that
24 to. So because of that, that testimony about the
25 rash is not to be considered by you. It's not

1 relevant evidence. So when you work towards your
2 unanimous verdict, you are not to consider that
3 testimony at all. Okay. Thank you.

4 Okay. You made it. You're free to go. All
5 right. Thank you, Mr. Kambat.

6 Do we have another witness?

7 MR. PIAGGIONE: Yes, your Honor, the
8 government would call Tom Corbett, C-O-R-B-E-T-T.

9 THE COURT: Mr. Mango, are these add-on
10 witnesses to your list or not?

11 MR. MANGO: No, your Honor. It's Thomas
12 Corbett. He's on our list.

13 (Discussion off the record.)

14 THE COURT: Mr. Linsin?

15 MR. LINSIN: Yes, your Honor.

16 THE COURT: Can you take ownership of that
17 exhibit, please.

18 MR. LINSIN: I'd be happy to. Thank you.

19 T H O M A S C O R B E T T, having been duly sworn
20 as a witness, testified as follows:

21 THE COURT: Okay. The witness stand is
22 all yours.

23 THE WITNESS: Thank you.

24 THE COURT: You're welcome. Get
25 comfortable. I'm going to have you move up towards

1 the microphone a little bit. I think the angle is
2 good. You don't have to be right on top of it,
3 because then it gets distorted, but I think you're
4 good.

5 THE WITNESS: Is this fine?

6 THE COURT: We'll try that. Okay. But
7 angle towards the jury a little bit, because you're
8 here to testify for their benefit.

9 A couple of very preliminary instructions.
10 What I'd like you to do is this. If you don't
11 understand a question, just let the questioner
12 know, whether it's an attorney or me, and the
13 question will be repeated for you. Don't answer a
14 question you don't understand. Try to be concise.
15 Don't volunteer information. That's generally when
16 things get a little bit complicated. If you can
17 answer a question yes or no, and the question calls
18 for that, please try to do it.

19 If there's an objection, give me time to rule
20 on the objection, and then I will give you
21 instructions on whether to complete the answer or
22 to answer the question in the first instance or to
23 wait for further instructions. Okay?

24 THE WITNESS: Okay.

25 THE COURT: All right. Speak in a

1 conversational tone into the microphone. State
2 your full name and spell your last name, please.

3 THE WITNESS: My full name is Thomas
4 Corbett.

5 THE COURT: Spell your last name.

6 THE WITNESS: C-O-R-B-E-T-T.

7 THE COURT: Okay. Thank you very much. I
8 think you'll carry well.

9 Mr. Piaggione, into the microphone, please.

10 MR. PIAGGIONE: Yes, your Honor.

11 DIRECT EXAMINATION BY MR. PIAGGIONE:

12 Q. Mr. Corbett, are you employed?

13 A. I'm currently retired.

14 Q. Okay. How long have you been retired?

15 A. Almost two and a half years.

16 Q. Was there a time when you were employed by the
17 Department of Environmental Conservation?

18 A. Yes.

19 Q. When were you employed by the Department of
20 Environmental Conservation?

21 A. I was employed with New York State DEC from
22 1980 to around 2010.

23 Q. Okay. So you refer to the DEC as the
24 Department of Enviromental Conservation?

25 A. Yes.

1 Q. Okay. And what positions did you hold with the
2 DEC?

3 A. I was -- I was a hazardous waste facility
4 monitor in two different positions from 1980 to
5 1997, and then I was an environmental chemist for
6 the remaining number of years until 2010.

7 Q. Okay. And please describe what your duties
8 were as the environmental monitor?

9 A. As an environmental monitor I was stationed at
10 facilities that stored, treated, and disposed of
11 hazardous wastes, and my duties were to make sure
12 that they were in compliance with environmental
13 regulations.

14 Q. And what were your duties as an environmental
15 chemist?

16 A. My duties were basically the same duties except
17 I was doing the same kinds of inspections at not
18 only the treatment, storage, and disposal
19 facilities, but also at generator facilities, like
20 small businesses and large businesses that
21 generated hazardous wastes.

22 Q. So did your duties include conducting
23 inspections at all?

24 A. Yes.

25 Q. All right. And what were the inspections

1 related to?

2 A. The inspections were related to the generation,
3 storage, treatment, and disposal of hazardous
4 waste.

5 Q. Is there a law that oversees those activities?

6 A. Yes, there is.

7 Q. What's that called?

8 A. That's RCRA. It's an acronym name for Resource
9 Conservation and Recovery Act.

10 Q. So would it be fair to say you were a RCRA
11 inspector?

12 A. Yes.

13 Q. Okay. Is there a way of becoming a certified
14 RCRA inspector?

15 A. Yes, there is. There's training involved.
16 There is a week-long training called HAZWOPER
17 training, which is hazardous waste operations
18 training. And then there's additional training
19 to -- to become familiar with the regulations and
20 how they apply to the various generators, treaters,
21 and disposers.

22 Q. And is there a certification that goes with
23 being a RCRA inspector?

24 A. Yes, there is.

25 Q. Okay. And what is that?

1 A. Well, it's -- it's a certification from the
2 department that you completed all the training and
3 that -- and that your work has been looked at by
4 other inspectors and you've passed muster, that
5 you -- you can do inspections properly.

6 Q. And did you become a certified RCRA inspector?

7 A. I did.

8 Q. Okay. Approximately when was that?

9 A. Approximately 1984, '85. Somewhere in that
10 range.

11 Q. Okay. And in the course of your duties at DEC,
12 how many RCRA inspections did you conduct?

13 A. Well over 500 in my career from 1985 to 2010.

14 Q. Now, have you ever heard the expression "small
15 quantity generator" before?

16 A. Yes, I have.

17 Q. What is a small quantity generator?

18 A. Small quantity generator is one that generates
19 small quantities of hazardous wastes, less than a
20 certain threshold of waste.

21 Q. Okay. And are small quantity generators
22 subject to RCRA inspection in New York?

23 A. Yes, they are.

24 Q. Okay. And did you conduct inspections of small
25 quantity generators?

1 A. I did.

2 Q. Okay. Now, what is the difference between a
3 RCRA -- excuse me.

4 What is a large quantity generator?

5 A. Is one that generates quite a bit more waste
6 than a small quantity generator. You know,
7 typically ten times the amount as a small quantity
8 generator or more.

9 Q. All right. Have you conducted inspections of
10 large quantity generators?

11 A. Yes, I have.

12 Q. All right. What is the difference between a
13 RCRA inspection for a large quantity generator as
14 opposed to a small quantity generator, if any?

15 A. There's quite a bit more involved in -- in a --
16 in the checklist of items that need to be looked at
17 at the different generator sizes. There is
18 typically about ten times the amount of paperwork
19 involved in -- in -- ten times the number of
20 questions to be asked of a large quantity generator
21 as opposed to a small quantity generator.

22 Q. All right. Did there come a time that you did
23 an inspection or rather -- withdrawn.

24 Did there come a time in the course of your
25 duties that you went to Tonawanda Coke Corporation?

1 A. Yes.

2 Q. All right. When was the first time?

3 A. First time was September 6, 2007.

4 Q. Okay. And was Tonawanda Coke Corporation
5 identified as a large quantity generator or a small
6 quantity generator?

7 A. They were identified from previous inspections
8 as a small quantity generator.

9 Q. Okay. Now, what were the circumstances under
10 which you went to Tonawanda Coke for the first
11 time?

12 A. I was --

13 MR. PERSONIUS: Excuse me, your Honor. I
14 object and the -- the basis is part of it is
15 relevance, part of it is Rule 404(b). I know it's
16 difficult to ferret that out, but --

17 THE COURT: Well --

18 MR. LINSIN: Your Honor, it may be
19 easier -- with apology, perhaps we shouldn't raise
20 this before the witness. Didn't expect this to
21 arise.

22 THE COURT: Let's do that.

23 (Side bar discussion held on the record.)

24 THE COURT: Okay. Mr. Personius.

25 MR. PERSONIUS: Judge, the inspection that

1 Mr. Piaggione I think is getting into involved an
2 allegation with PCBs, and one of the government's
3 404(b) applications related to PCBs, and I don't
4 think PCBs have any place in this case.

5 THE COURT: That is where you're going
6 with this?

7 MR. PIAGGIONE: No. Where I was going was
8 he also conducted an interview of the defendant at
9 that time.

10 THE COURT: Mr. Kamholz?

11 MR. PIAGGIONE: Mr. Kamholz, correct.

12 He was not going to testify about the details
13 of the PCB complaint.

14 THE COURT: What -- what conversations
15 with Defendant Kamholz?

16 MR. PIAGGIONE: He -- he went through the
17 information regarding what he did. Basically went
18 through a -- a checklist as to the inspection --
19 what would normally be a small quantity generator
20 inspection, and he asked him questions about what
21 they did with their waste, et cetera. He did not
22 get into -- we're -- I wasn't going to get into the
23 complaints.

24 THE COURT: PCB.

25 MR. PERSONIUS: Okay.

1 MR. PIAGGIONE: What I could do is I could
2 modify the question to say, did you go there in
3 response to some complaint, as a result not talk --
4 did you have a conversation with Mr. Kamholz about
5 the process?

6 THE COURT: Well, you're not going there
7 so --

8 MR. PIAGGIONE: Right. Did you --

9 THE COURT: Okay. So there won't be any
10 reference --

11 MR. PERSONIUS: I just want to make sure.

12 THE COURT: Mr. Linsin?

13 MR. LINSIN: Your Honor, I don't doubt
14 counsel's representation. My concern, as we've
15 said before about these issues, is that unless this
16 witness has been expressly cautioned not to use
17 that term, all he needs to do is make reference to
18 this one time, and the, you know, genie is out of
19 the bottle.

20 MR. PIAGGIONE: He has been cautioned,
21 your Honor. Whether or not, you know --

22 THE COURT: All right. I mean, you
23 represent that he's been cautioned. We'll --

24 MR. PERSONIUS: Okay.

25 THE COURT: -- we'll proceed on that

1 basis. You have to be very, very careful.

2 MR. PIAGGIONE: Yes, your Honor.

3 MR. PERSONIUS: Thank you, Judge.

4 THE COURT: Okay. Thank you.

5 (End of side bar discussion.)

6 BY MR. PIAGGIONE:

7 Q. You indicated you went to Tonawanda Coke on
8 September 6, 2007?

9 A. Yes.

10 Q. Okay. Can you describe what, if anything,
11 happened to gain access to the facility?

12 A. Well, there's a gate at the facility that you
13 first have to drive up to and identify yourself,
14 which I did. And they ask you why you're there,
15 and I said I was there to do a hazardous waste
16 inspection. They admitted me through the gate, and
17 you drive up to what's a guard shack at the
18 facility, and you meet a facility representative
19 there. And that's -- that's what I did.

20 Q. And who was the person from the facility that
21 met you there?

22 A. I met with Mark Kamholz.

23 Q. Okay. And what did the inspection consist of?

24 A. Well, the -- the inspection consisted of an
25 interview with Mark Kamholz to determine where --

1 where and how hazardous wastes were managed at the
2 facility.

3 Q. Okay. And did -- did you at that time observe
4 the recycling process?

5 A. Did I observe which recycling process?

6 Q. Did he indicate there was a recycling occurring
7 at the site?

8 A. Yes.

9 Q. Did you observe that process?

10 A. No, I did not.

11 Q. Okay. Is Mr. -- what was being recycled?

12 A. Well, there were two recycling issues that I
13 was dealing with on that inspection.

14 Q. I want you to talk about the K087 waste.

15 A. All right. K087 waste was being recycled at
16 the facility, and that's the only major waste
17 stream that Mr. Kamholz indicated was being
18 generated at the facility at the time.

19 Q. Okay. What is K087 waste?

20 A. It is coal tar residue.

21 Q. Okay. And how did he describe the recycling
22 process?

23 A. He -- he described it as -- as being where the
24 coal tar was reintroduced into the -- into the coke
25 ovens by putting it on coal that was going into the

1 ovens.

2 Q. Okay. Did he indicate where the coal tar was
3 being mixed with the coal at Tonawanda Coke
4 Corporation?

5 A. No. We didn't discuss that.

6 Q. Okay. Did you have an impression as to where
7 it was being --

8 MR. LINSIN: Objection, your Honor.

9 THE WITNESS: I --

10 THE COURT: Wait.

11 MR. LINSIN: Objection.

12 THE COURT: There's an objection,
13 Mr. Corbett.

14 MR. LINSIN: If there's a foundation as to
15 things he observed or things other people told him,
16 I will withdraw the objection. But an impression
17 is just not a proper question.

18 THE COURT: All right. Against that
19 backdrop, start out again, please.

20 BY MR. PIAGGIONE:

21 Q. Based upon your conversation with Mr. Kamholz,
22 where did you think the coal tar sludge was being
23 mixed with the coal?

24 A. I thought it was being done in proximity to
25 wherever the coal tar was being generated, which

1 was pretty much in the same proximity as the coke
2 ovens.

3 Q. Okay. And did you get the impression it was
4 being mixed on the ground?

5 MR. PERSONIUS: Your Honor, object.
6 Object. He has already described what he thought.
7 Now he's asking a leading question.

8 THE COURT: It is a leading question.
9 I'll sustain the objection.

10 Move on, please.

11 BY MR. PIAGGIONE:

12 Q. Based on your conversation, where was -- how
13 was the coal tar sludge and coal being mixed before
14 entering the battery?

15 A. I -- I didn't have enough information to figure
16 that out.

17 Q. As a result of your inspection with
18 Mr. Kamholz, did you find that Tonawanda Coke was
19 in compliance with RCRA regulations?

20 THE COURT: Try that one again.

21 BY MR. PIAGGIONE:

22 Q. RCRA regulations, okay.

23 After -- did you complete your inspection?

24 A. I did complete the inspection.

25 Q. And after your inspection, did you find that

1 Tonawanda Coke was in compliance with RCRA
2 regulations for its handling of K087 waste?

3 A. Yes.

4 Q. Okay. Did there come a time that you returned
5 to Tonawanda Coke Corporation?

6 A. Yes. I returned in the following year.
7 July 31st in the following year, 2008.

8 Q. Okay. Was that an inspection?

9 A. That was a follow-up inspection.

10 Q. Okay. We'll move on to when was the next time
11 you went to Tonawanda Coke Corporation.

12 A. Next time I went to Tonawanda Coke was, let's
13 see, June 17th, 2009.

14 Q. I want to go back to the July 31st, '08,
15 inspection. Did you fill out an inspection form
16 for that visit as well?

17 A. Yes, I did.

18 Q. Okay. Did you observe the recycling process
19 when you were there that time?

20 A. No, I did not.

21 Q. Did you follow the same entrance procedures to
22 get into Tonawanda Coke?

23 A. Yes. Although I met with a different
24 representative.

25 Q. Okay. And as a result of that particular visit

1 on July 31st of '08, did you find that Tonawanda
2 Coke was in compliance with the RCRA regulations
3 for its handling of its K087 waste?

4 A. That inspection, as I said, being a follow-up,
5 I was not even concerned with that -- with that
6 recycling during that inspection.

7 Q. Okay. Now, going on to June 17th, '09. You
8 indicated you -- you went back to Tonawanda Coke.

9 A. Yes, I did.

10 Q. Okay. What were the circumstances under which
11 you went back to Tonawanda Coke in June of '09?

12 A. There was some internal meetings at -- at New
13 York State DEC with other inspectors that had been
14 at that facility. Namely, Cheryl Webster was in
15 the air division at the time. I don't know if she
16 still is, but there was some question as to whether
17 or not the K087 was being properly handled, and I
18 was going to go out to find out more about it.

19 Q. Okay. So could you describe what happened when
20 you went to the -- excuse me. Withdrawn.

21 Did you go there with anyone else?

22 A. Yes, I did. I went there with Lenny Grossman
23 of the EPA and Ellen Banner of the EPA.

24 Q. Okay. And can you describe what, if anything,
25 happened at that time?

1 A. Well, again, we -- we all arrived at the gate
2 together, were admitted through the gate. I met
3 with Mark Kamholz at the security shack and went to
4 his office to -- to talk about the K087 issue.

5 Q. Okay. And what did the inspection consist of
6 then?

7 A. It was mostly an information-gathering session.
8 It was quite a bit of time just sitting in -- in
9 Mr. Kamholz's office discussing how wastes are
10 generated and managed at the facility.

11 Q. Did you observe the recycling process at that
12 time?

13 A. No, I did not observe it at that time.

14 Q. Okay. And I'd like to have for identification
15 Defendant's Exhibit K.

16 And I'd ask if you could take a look at that on
17 the screen, Mr. Corbett.

18 If we could scroll through that slowly.

19 A. This is the first inspection report from 2007.

20 Q. Okay.

21 MR. LINSIN: This is for identification,
22 your Honor?

23 THE COURT: The exhibit is for
24 identification?

25 MR. LINSIN: Yes.

1 MR. PIAGGIONE: Yes.

2 MR. LINSIN: Thank you.

3 MR. PIAGGIONE: Take a look at that.

4 MR. LINSIN: Your Honor, we would have no
5 objection to the admission of this document if
6 Mr. Piaggione intends to move it.

7 MR. PIAGGIONE: I do, your Honor. So if
8 Mr. Personius agrees -- stipulates, I would ask
9 that this document be moved into evidence.

10 MR. PERSONIUS: We would like just a
11 minute, please, to review a hard copy of it.

12 THE COURT: Certainly.

13 MR. PERSONIUS: Thank you.

14 We object, your Honor, based on the discussion
15 we had up at the side bar.

16 THE COURT: Okay. On that basis, at least
17 at this point, I'll sustain the objection.

18 MR. PIAGGIONE: One moment, your Honor.

19 THE COURT: Sure.

20 BY MR. PIAGGIONE:

21 Q. Now, getting back to the inspection of June of
22 '09, can you describe if you went outside
23 Mr. Kamholz's office as part of that inspection?

24 A. Yes, we did. After -- after a long
25 conversation, then we went out and looked at the

1 areas on the site where waste was managed.

2 Q. Did you tell Mr. Kamholz he was in violation of
3 the law at that inspection?

4 MR. LINSIN: Objection, your Honor. I'm
5 not sure what areas the witness is testifying he
6 observed. I think we need a clarification.

7 THE COURT: No, I agree. Sustained.

8 BY MR. PIAGGIONE:

9 Q. Could you tell us where you went as part of the
10 inspection?

11 A. We -- we started at the -- I believe we started
12 at the coal tar decanter, which is where the coal
13 tar ends up coming out of the process to see -- to
14 physically see the coal tar and -- and to get a
15 further explanation as to how it was then moved
16 into the recycling process.

17 Q. Okay. Where else did you go?

18 A. We went out to the coal fields, and we also
19 went to some tanks that are adjacent to the -- to
20 the coal fields.

21 Q. Did you take photographs when you were on this
22 inspection?

23 A. Yes, we did.

24 Q. Okay.

25 MR. PIAGGIONE: Your Honor, I would ask

1 that we call up Government Exhibit 3.01, which is
2 already in evidence.

3 THE COURT: Okay.

4 BY MR. PIAGGIONE:

5 Q. Do you recognize that?

6 A. Yes. This is a -- this is a concrete pad that
7 was adjacent to the coal field.

8 Q. Okay. And what was on that pad, if you know?

9 A. Well, it's an -- it's a combination of coal
10 tar, coal fines. It looked like there was some
11 earth mixed in. It was a bunch of different
12 things.

13 Q. And you took that photograph?

14 A. Yes, I did.

15 Q. Okay. Go on to Government Exhibit Number 3.02,
16 which is already in evidence, please.

17 Okay. Can you tell us what that is?

18 A. This is another vantage point looking at that
19 same pad.

20 THE COURT: It's already up.

21 BY MR. PIAGGIONE:

22 Q. Okay. Was there any explanation as to what the
23 machinery next to it was?

24 A. No.

25 Q. And was there any indication that this was

1 where the coal tar sludge and the coal were being
2 mixed for recycling?

3 A. No.

4 Q. Okay. We'll go on to 3.03, which is already in
5 evidence. And --

6 THE COURT: It's published.

7 MR. PIAGGIONE: Thank you, your Honor.

8 BY MR. PIAGGIONE

9 Q. Do you recognize that?

10 A. Yes, I do.

11 Q. And what is that?

12 A. It's yet another viewpoint of the same pad.

13 Q. Okay. And we'll go on to Government Exhibit
14 Number 3.04, which is also in evidence.

15 Is it published? Yes.

16 Okay. And what is that?

17 A. Now, this is a different location probably 100
18 yards away from that pad to the -- to the north.

19 It's what are called the Barrett tanks. We found
20 out to be that was their name, the Barrett tanks.

21 And it's tanks that formerly held coal tar and coal
22 tar products that -- that had been involved in a
23 fire.

24 Q. And was there any observations that you made as
25 to whether or not the coal tar that was in the

1 tanks had leaked out of the tanks?

2 A. Yes. This picture actually shows that.

3 Q. Okay. Can you point out where on this picture
4 it shows that?

5 THE COURT: Just tap the screen with your
6 finger with authority and you'll get an area.

7 That's it. Thank you.

8 BY MR. PIAGGIONE:

9 Q. And did Mr. Kamholz indicate what was -- what,
10 if anything, was happening or being done to that
11 area?

12 A. He said that there wasn't much going on there
13 right now, but that their plan was to -- to deal
14 with -- with the waste inside these cut-down tanks.

15 Q. Okay. Did he indicate how he was going to take
16 care of the waste inside the tanks?

17 A. He said that the company planned on recycling
18 the material.

19 Q. Did he indicate where they were going to
20 recycle the material?

21 A. Back into the coke ovens.

22 Q. Did he say where the mixing of that material
23 was going to occur?

24 A. No.

25 Q. Go on to Government Exhibit 3.05.

1 And what is that?

2 A. This is -- this looks like a wider view of the
3 same tank.

4 Q. Okay. And was there -- is there evidence of a
5 material being leaked out in that picture?

6 A. Yes.

7 Q. Where would that be?

8 MR. LINSIN: Your Honor, this is just
9 cumulative. This is the exact same location of the
10 same tanks, just a wider frame. And it's just a
11 waste of time.

12 THE COURT: Okay. Well, it is cumulative.
13 So, is there anything new?

14 BY MR. PIAGGIONE:

15 Q. Is there anything different in this picture as
16 opposed to the other picture?

17 A. No.

18 Q. Okay. Then we'll move on.

19 Can I have Government's 3.06?

20 THE COURT: All right. That's not
21 received, I don't think.

22 MR. PIAGGIONE: For identification then.

23 BY MR. PIAGGIONE:

24 Q. Can you identify that?

25 A. Yes.

1 Q. What is that?

2 A. Again, these are what's collectively called the
3 Barrett tanks. These are two tanks that haven't
4 been cut down, like the other one we saw was. And
5 the material in the foreground is coal tar.

6 Q. And is that a clear and accurate depiction of
7 what you observed in June of '09 during your
8 inspection?

9 A. Yes.

10 Q. Okay.

11 MR. PIAGGIONE: We ask that this
12 photograph be introduced in evidence as Government
13 Exhibit 3.06.

14 MR. LINSIN: No objection, your Honor.

15 MR. PERSONIUS: No objection, your Honor.

16 THE COURT: All right. Did you take this
17 photo, Mr. Corbett?

18 THE WITNESS: Yes, I did.

19 THE COURT: Okay. Exhibit 3.06 will be
20 received, no objection, and can be published.

21 (Government's Exhibit 3.06 was received
22 into evidence.)

23 MR. PIAGGIONE: Has it been published,
24 your Honor?

25 THE COURT: Yes, it has been.

1 MR. PIAGGIONE: Thank you.

2 BY MR. PIAGGIONE:

3 Q. Mr. Corbett, can you indicate where in this
4 photograph you said there was coal tar sludge?

5 A. Yes.

6 Q. Will you point on the screen?

7 Did -- did anyone attempt to step in that
8 material?

9 A. Not on this particular visit.

10 Q. Okay. On a subsequent visit?

11 A. On a subsequent visit.

12 Q. What date would that be?

13 A. Pardon me?

14 Q. What date would that be?

15 A. That would be September 10th, 2009.

16 Q. Okay. And what happened when someone attempted
17 to step in that material?

18 A. One of the samplers --

19 THE COURT: Hold on for a second. I lost
20 you. All right. Give us the question again.
21 Don't answer it.

22 THE WITNESS: All right.

23 MR. PIAGGIONE: What, if anything,
24 happened when a person stepped in that material in
25 September of '09?

1 MR. LINSIN: Your Honor, I just object on
2 the ground of relevance. I do not understand the
3 relevance of the question.

4 THE COURT: All right. What is the
5 relevance?

6 MR. PIAGGIONE: Your Honor, the photograph
7 depicts what appears to be almost a solid surface,
8 and witness will testify from his observations
9 based upon --

10 THE COURT: Okay. All right. Overruled.
11 I'll allow the question.

12 MR. PIAGGIONE: Thank you, your Honor.

13 BY MR. PIAGGIONE:

14 Q. When you observed someone step into that
15 material, what did you observe happen?

16 A. It -- it was -- it was just a crust on top and
17 underneath was liquid coal tar. It was like, you
18 know, falling into quicksand.

19 Q. Okay. Did that person need assistance to get
20 out?

21 A. Yeah.

22 MR. PIAGGIONE: We'll go on to -- has 3.07
23 been introduced into evidence yet?

24 THE COURT: It's published.

25 MR. PIAGGIONE: Okay. Thank you, your

1 Honor.

2 BY MR. PIAGGIONE:

3 Q. Mr. Corbett, do you -- can you recognize this
4 photograph?

5 A. Yes, I do.

6 Q. All right. You took that photograph as well?

7 A. I did.

8 Q. Okay. Can you describe what we're looking at
9 here?

10 A. We're looking at another one of the -- one of
11 the two tanks that were cut down with cutting
12 torches, and we're seeing coal tar leaking out on
13 the outside of the tank.

14 Q. Okay. We will go on to Government
15 Exhibit 3.09, which I believe has also been
16 introduced into evidence.

17 THE COURT: It's published. Go ahead.

18 BY MR. PIAGGIONE:

19 Q. All right. Can you tell us what you're
20 observing here?

21 A. Again, the dark black substance is a coal tar,
22 and it's -- this is on the outside of the tank.

23 Q. Okay. Go to Government Exhibit 3.11, please.

24 THE COURT: All right. Okay. It's
25 published.

1 BY MR. PIAGGIONE:

2 Q. Can you tell us what that is?

3 A. This is the coal tar decanter.

4 Q. Okay. And what is significant about the coal
5 tar decanter?

6 A. This is where coal tar is generated at the
7 facility coming out of their process.

8 Q. Is this what you refer to as K087 waste?

9 A. Yes.

10 THE COURT: What are we referring to? Put
11 an arrow on it, please.

12 BY MR. PIAGGIONE:

13 Q. I'd like to show you for identification
14 purposes only 3.13, please. Let's try 3.15. Take
15 that down.

16 Now, was there any indication as to what was
17 going on with the coal tar sludge in the outside of
18 the tanks -- did you observe the outside --
19 withdrawn.

20 MR. LINSIN: Objection. Can we get
21 clarification on what tanks we're talking about?

22 THE COURT: I don't think we have a
23 question, do we?

24 MR. PIAGGIONE: No, we don't.

25 BY MR. PIAGGIONE:

1 Q. With respect to the tanks that you -- that had
2 been -- the remnants of the tanks that you observed
3 in June of '09, was there material outside the
4 tanks that you observed?

5 A. Yes, there was.

6 Q. All right. Did you have a discussion with
7 Mr. Kamholz about that material?

8 A. Yes. We wanted to know how -- how they were
9 going to clean it up.

10 Q. Okay. And did Mr. Kamholz indicate how they
11 were going to clean that material up?

12 A. Again, I think I stated earlier that the
13 company's plans were to recycle the material into
14 the coke oven batteries.

15 Q. Okay. All right. After that inspection, did
16 you engage in conversations with DEC officials
17 about the recycling of this material?

18 A. Yes.

19 Q. Okay. And as a result of that, did you return
20 to Tonawanda Coke Corporation?

21 A. Yes.

22 Q. And when was that?

23 MR. LINSIN: Can we get a time frame with
24 the inspection being referenced and the return? I
25 just don't have a time frame as to when these

1 events occurred.

2 THE COURT: All right. Yeah, there was
3 one question that related to the -- after the
4 inspection and then the return. So those are
5 apparently two separate dates.

6 MR. PIAGGIONE: My apologies, your Honor.

7 BY MR. PIAGGIONE:

8 Q. After the June '09 inspection, did you ever
9 have conversations with officials at DEC?

10 A. Yes.

11 Q. And what were those discussions about?

12 THE COURT: Give us a when first.

13 BY MR. PIAGGIONE:

14 Q. Approximately, when was that?

15 A. Shortly after the inspection. Probably within
16 weeks of the inspection.

17 Q. And this was in June of '09 that you had the
18 inspection?

19 A. Yes.

20 Q. So these discussions occurred in June of '09?

21 A. Yes, they did.

22 Q. Okay. And what were those discussions about?

23 A. They were about -- mostly about the bigger
24 issue that we saw as being these Barrett tanks with
25 the material on the ground and -- and how that was

1 going to be addressed.

2 Q. Okay. And what was the issue that you were
3 concerned about?

4 A. Well, it was -- it was uncontained releases of
5 what we know as hazardous waste.

6 Q. Why did you know it was hazardous waste?

7 A. Well, Mr. Kamholz indicated it was K087 while
8 we were there.

9 Q. So what, if anything, did you do?

10 MR. PERSONIUS: Forgive me, Judge. Before
11 we go to that, could we find out if the witness
12 knows who else was involved in these discussions,
13 please?

14 BY MR. PIAGGIONE:

15 Q. Sure. Who did you have these discussions with?

16 A. They were with my direct superiors.

17 Q. Can you give us the names of your direct --

18 A. Jim Strickland. There were Albany -- Albany
19 contacts. There were EPA officials on conference
20 calls.

21 Q. Do you recall any names of these officials?

22 A. Well, Lenny Grossman and -- and his boss. I
23 forget who his boss was at the time. And I can't
24 remember exactly who in Albany, but there were
25 Albany DEC personnel also.

1 Q. So did there come a time that you returned to
2 Tonawanda Coke Corporation?

3 A. After the September --

4 Q. After the June inspection and your
5 conversations with these --

6 A. Yes. Yes. There was a time.

7 Q. Okay.

8 A. It was in September, September of the same
9 year. September 10th.

10 Q. Okay. Can you tell us what you did at that
11 time?

12 A. At that time, again, I was returning to the
13 site with EPA personnel with the express idea of
14 sampling the material that was on the ground around
15 these Barrett tanks.

16 Q. And what was the purpose of sampling?

17 A. Well, it was -- it was -- it was twofold
18 actually. It was, one, to determine if it was
19 indeed K087 by -- by doing sort of a fingerprint
20 analysis. And then also to -- to make sure that
21 there wasn't any inadvertent mixing of other
22 hazardous wastes in with the material.

23 Q. Okay. As part of that inspection, then, did
24 you go out to where these dismantled tanks were?

25 A. Yes, we did.

1 Q. Okay. Can you describe the area -- can you
2 describe that area at that time?

3 A. Well, the area had changed in complexion from
4 the previous visit that we had at the facility in
5 that there were coke piles piled up very close in
6 proximity to -- to these tanks. And there was also
7 a roadway built in between the two major tanks that
8 had been cut down. Roadway built out of what
9 looked like coal fines and coal.

10 Q. Okay. Can we go to Government Exhibit 136.10,
11 which is already in evidence.

12 And I'll ask you, can you identify that?

13 A. Yes, I can. That's one of the cut-down Barrett
14 tanks and it's -- coal tar sludge is what we see
15 inside of it. Coal tar and coal tar sludge.

16 Q. Can we go to Government Exhibit 136.10, please.

17 THE COURT: That's what we have up there
18 now.

19 MR. PIAGGIONE: 01, please. 136.01
20 please.

21 BY MR. PIAGGIONE:

22 Q. And can you tell us what we're looking at here?

23 A. Yes. We're looking at -- at -- at the
24 cut-down -- one of the cut-down Barrett tanks with
25 this coal -- coal roadway that I was describing in

1 the foreground.

2 Q. Okay. And 136 -- 136.02, please.

3 And that is?

4 A. This is the other tank and -- with -- with the
5 two intact tanks behind it. This is another
6 cut-down tank and in the foreground on the right is
7 the -- this roadway that I was describing that was
8 built between them.

9 Q. Okay. And could you put -- just tap where the
10 road was that you said was put in.

11 Thank you.

12 Based upon your observations, was there any
13 evidence of excavation in this area?

14 A. Yes. If you go back a couple pictures, I could
15 point that out.

16 Q. Well, what I'll do is we're going to go to
17 Government's Exhibit 119.07 for identification
18 purposes.

19 Do you recognize that photograph?

20 A. Yes, I do.

21 Q. Okay. And what does it depict?

22 A. It depicts the -- one of the Barrett tanks
23 that's been cut down and shows evidence where a
24 machine has been in digging some of the coal tar
25 residue out.

1 Q. And this is what you observed on September
2 10th, 2009, at the -- the dismantled tank area at
3 Tonawanda Coke Corporation?

4 A. Yes. This looks very different from -- from
5 what it looked like on the previous inspection.

6 Q. And is that a fair and accurate depiction of
7 what you observed at that time?

8 A. Yes, it is.

9 MR. PIAGGIONE: Your Honor, I would ask
10 that this be introduced into evidence as
11 Government's Exhibit 119.07.

12 MR. LINSIN: No objection, your Honor.

13 MR. PERSONIUS: Just to clarify, Judge,
14 the photograph was taken at the September
15 inspection? With that clarification, no objection.

16 THE COURT: Okay. 119.07 received. No
17 objection. And may be published.

18 (Government's Exhibit 119.07 was received
19 into evidence.)

20 MR. PIAGGIONE: Has it be published, your
21 Honor?

22 THE COURT: It's published, yes.

23 MR. PIAGGIONE: Thank you.

24 BY MR. PIAGGIONE:

25 Q. Could you, please, on the screen tap where

1 you're talking about excavation marks.

2 Okay. Did you have a conversation with
3 Mr. Kamholz as to the excavation of this tank at
4 that time in the field?

5 A. Yes, we did.

6 Q. Okay. And can you tell us what that
7 conversation consisted of?

8 A. Well, we -- we asked him, you know, what was
9 going on with the material and how it was being
10 managed. And his response was that -- that they
11 wanted to get at it and try and get it recycled so
12 it won't be exposed to the environment.

13 Q. Did they tell you where it was being recycled?

14 MR. PERSONIUS: Your Honor, could we have
15 an identification of who the "we" is or "they" --
16 They talked about more than one person -- please.

17 THE COURT: Yes.

18 MR. PIAGGIONE: Did Mr. Kamholz -- I'm
19 sorry, your Honor.

20 THE COURT: Go ahead, Mr. Piaggione.

21 BY MR. PIAGGIONE:

22 Q. Did Mr. Kamholz tell you where it was being
23 recycled?

24 A. He told us it was being --

25 Q. You're saying "us". Did he tell you?

1 A. He told myself, and Lenny Grossman, and I
2 believe that's -- that's all that was -- were in
3 the conversation.

4 Q. Okay. So it was the three of you in
5 conversation?

6 A. Yes.

7 Q. Okay. If you could, please state when you
8 heard, as opposed to what we or us heard, if that's
9 possible.

10 A. What I heard was that the material was being
11 recycled by placing the material in the coal fields
12 to be mixed in with coal to go into the coke oven
13 batteries.

14 Q. Okay. Was that the first time that you had
15 heard that the material was being mixed into the
16 coal fields?

17 A. No, it wasn't. It was on the previous visit
18 Mr. Kamholz also stated that the recycling was
19 physically done in the coal field.

20 Q. When you had that conversation back in June,
21 was there a question -- did he indicate that this
22 material -- did Mr. Kamholz indicate that this
23 material was being recycled in the --

24 MR. LINSIN: Objection, leading, your
25 Honor. You could simply ask what Mr. Kamholz said.

1 THE COURT: I don't know what you're
2 referring to. The arrowed material? Is that what
3 you're saying?

4 MR. PIAGGIONE: Yes.

5 THE COURT: Clear the screen and ask the
6 question again, please.

7 MR. PIAGGIONE: Okay. Can we take the
8 screen down, please.

9 THE COURT: I meant the arrows from the
10 screen.

11 MR. PIAGGIONE: Oh.

12 THE COURT: I'm sorry.

13 MR. PIAGGIONE: It's okay.

14 BY MR. PIAGGIONE:

15 Q. In June you had a conversation with Mr. Kamholz
16 regarding the recycling of the material that was --
17 recycling of the K087 waste?

18 A. Yes.

19 Q. And -- and what did he say to you and what did
20 you say to him at that time?

21 A. What did he say to me and what did I -- both
22 ways?

23 Q. Yes.

24 A. Mr. Kamholz indicated that the K087 was mixed
25 with coal in the coal fields to the west of -- of

1 the pad that's in the coal field.

2 Q. Okay. And what did you say to him?

3 A. I said nothing.

4 Q. Okay. With respect to the conversations that
5 you had after that -- after that inspection with
6 your superiors that you previously testified about,
7 was this issue of recycling on the coal fields
8 discussed?

9 A. Yes, it was at length.

10 Q. Okay. And subsequently was it --

11 MR. LINSIN: Your Honor, time frame for
12 this discussion. Was this the same discussion that
13 was already testified about?

14 THE COURT: Give us --

15 MR. PIAGGIONE: I believe I identified it,
16 your Honor, as the conversation that he testified
17 about after the June inspection.

18 THE COURT: After the June inspection?

19 MR. PIAGGIONE: Right.

20 THE COURT: Which is September?

21 MR. PIAGGIONE: No. It was several weeks
22 after the inspection.

23 THE COURT: The end of June? By the end
24 of June?

25 MR. PIAGGIONE: Correct.

1 THE COURT: Set it again. Let's get rid
2 of this photo, please. Thank you.

3 BY MR. PIAGGIONE:

4 Q. Okay. After the June inspection you testified
5 you had conversations with your superiors regarding
6 the June inspection, the information that you found
7 in your June inspection, is that correct?

8 A. Yes.

9 Q. Okay. Was part of that conversation -- and if
10 we have a time frame, how soon after that June
11 inspection did these conversations take place?

12 A. Within two or three weeks of -- of the
13 inspection.

14 Q. All right.

15 THE COURT: Is this something new?
16 Because we did go into this before.

17 MR. PIAGGIONE: Correct, your Honor. When
18 I asked the question did you also discuss this
19 issue about recycling, Mr. Linsin objected that he
20 didn't have a time frame. So I'm going to that --
21 bring out that point.

22 THE COURT: I mean, I know we had a
23 conversation. We set a time period, and I think
24 Mr. Corbett said about three weeks or so after the
25 inspection. Okay. Ask a next question. Let's see

1 where we go.

2 BY MR. PIAGGIONE:

3 Q. Okay. During -- at the time of -- that you had
4 these conversations in later June of '09, did you
5 discuss the issue of recycling of the K087 waste on
6 the coal piles at Tonawanda Coke?

7 A. Yes.

8 Q. All right. And as a result of that
9 conversation, was that one of the reasons why you
10 returned in September of 2009?

11 A. Yes.

12 Q. Okay. At the -- during the 2009 inspection,
13 did you have conversations with Mr. Kamholz
14 regarding the recycling of the tar sludge and
15 material outside the tanks in the coal field?

16 MR. LINSIN: Objection, your Honor. Which
17 inspection in 2009?

18 THE COURT: Are you talking about
19 September? Are you talking about June? Or that
20 intermittent discussion?

21 MR. PIAGGIONE: I'm sorry, your Honor. I
22 thought I had indicated.

23 BY MR. PIAGGIONE:

24 Q. During your September 2009 inspection, did you
25 have conversations with Mr. Kamholz regarding the

1 recycling of the coal tar sludge that was in the
2 tanks and outside the tanks?

3 A. Yes.

4 Q. Okay. Did he indicate where that material was
5 being recycled?

6 A. I think we already went over this. I said yes.

7 Q. Okay.

8 A. Yes, we did.

9 Q. As a result of that, did you say anything to
10 him regarding this recycling -- where this
11 recycling was taking place?

12 A. Well, this was the second visit, and
13 Mr. Kamholz was a little apprehensive about why we
14 were there sampling the material. He asked me
15 directly why we were there trying to figure out --
16 what they were doing, and I said that it was
17 related to how they were physically recycling the
18 material.

19 Q. Okay. Did you indicate to them that there was
20 an issue regarding it being recycled out in the
21 coal fields?

22 A. I did not. I did not answer. I did not talk
23 about that issue.

24 Q. And why not?

25 A. Because it was -- I was -- I was there as a

1 part of a team, and Mr. Grossman from EPA was kind
2 of leading the team. And he -- he indicated to me
3 that he did not want to bring this up because we
4 were still gathering information, and I agreed with
5 that.

6 MR. PERSONIUS: I'm sorry, who was it that
7 was saying this?

8 THE COURT: Mr. Grossman, I think.

9 THE WITNESS: Mr. Grossman, Lenny
10 Grossman, EPA.

11 MR. PERSONIUS: Oh, thank you.

12 BY MR. PIAGGIONE:

13 Q. Subsequently, was there a determination made as
14 to whether or not this was proper recycling of coal
15 tar sludge?

16 A. Yeah. I think after the September inspection
17 everyone agreed on EPA's side and DEC's side
18 that -- that it was not proper recycling method by
19 placing this coal tar directly on the coal fields.

20 Q. And based upon --

21 MR. PERSONIUS: Pardon me. I'm sorry to
22 interrupt. Could we have an identification who
23 everyone was, who agreed to this, please?

24 THE COURT: Well, he said EPA and DEC.
25 You want more than that?

1 MR. PERSONIUS: I would be interested in
2 knowing who was involved. I can ask it on cross.

3 THE COURT: You can. Do you want to go
4 through that now, or do you want to wait?

5 BY MR. PIAGGIONE:

6 Q. Do you remember the names of --

7 A. Well, I don't remember Lenny Grossman's boss's
8 name, but I know it was his boss. Lenny Grossman,
9 my boss Jim Strickland, and I forget who from our
10 DEC Albany central office that was involved, but
11 there were personnel there too that were all privy
12 to the conversation.

13 Q. And what exactly was the problem with the
14 recycling process?

15 A. Well, the guidance for recycling this material
16 specifically states that it cannot be done on the
17 ground.

18 MR. PIAGGIONE: I have no further
19 questions, your Honor.

20 Well, one moment, your Honor, if I could.

21 THE COURT: Certainly.

22 MR. PIAGGIONE: Should we continue, your
23 Honor?

24 THE COURT: You have more questions.

25 MR. PIAGGIONE: I did.

1 THE COURT: Okay. Sure.

2 BY MR. PIAGGIONE:

3 Q. Just a matter of clarification, when you were
4 discussing in June the issue of the K087 waste
5 being mixed out in the coal field, were you
6 referring to the K087 that was found in the tar
7 box?

8 A. Yes, right. In the coal -- the actively
9 generated material that comes out of the coal
10 decanter, the everyday process that generates the
11 waste at the site, it was that material that we
12 were talking about at that time.

13 Q. Okay. And you were not talking about the
14 material that was in the tanks?

15 A. No, we were not talking about that material.

16 Q. Okay.

17 MR. PIAGGIONE: No further questions, your
18 Honor.

19 THE COURT: Okay. You probably did hear
20 that conversation I had with Michelle. So, what
21 we're going to do is we're going to invite
22 Mr. Corbett to come back tomorrow morning. So, we
23 will start tomorrow at 9:30, and we'd ask you to be
24 here again, Mr. Corbett.

25 THE WITNESS: What time was that, Judge?

1 THE COURT: 9:30.

2 THE WITNESS: 9:30.

3 THE COURT: We are going to recess for the
4 day. Thank you for your attention. I know we were
5 a little bit disjointed today, ladies and
6 gentlemen, but we did make progress.

7 Please keep your minds open. Don't prejudge
8 the case. I mean, your job is obviously to resolve
9 the fact issues, and we will get there. And
10 ultimately you are to be fair to both sides against
11 the backdrop of whether the government to your
12 satisfaction unanimously -- and that requires an
13 application of your common sense, your experience,
14 and your intelligence to resolving the issues of
15 whether the government has established those
16 essential elements of each crime charged beyond a
17 reasonable doubt. At all times, the presumption of
18 innocence, as you know, is, and remains, with the
19 defendants in this case, both defendants. Please
20 don't do anything by way of separate investigation,
21 or don't access the Internet or any social networks
22 or anything like that. You've heard me say that,
23 but it's very, very important because you know why.
24 What you need in totality will be given to you in
25 this courtroom, the four walls of the courtroom.

1 Avoid anything else.

2 You've been terrific once again. We really
3 appreciate it. Thank you very much, and we'll see
4 you tomorrow at what time?

5 THE JURY: 9:30.

6 THE COURT: Thank you. Have a safe trip
7 back and forth.

8 (Jury excused from the courtroom.)

9 THE COURT: Okay. Mr. Corbett, you can
10 step down. Thank you very much. We'll see you
11 tomorrow.

12 MR. LINSIN: Thank you.

13 THE COURT: Okay.

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CERTIFICATION

I certify that the foregoing is a
Correct transcription of the proceedings
Recorded by me in this matter.

s/Michelle L. McLaughlin
Michelle L. McLaughlin, RPR
Official Reporter
U.S.D.C., W.D.N.Y.